

72 Am. Jur. 2d State and Local Taxation Twelve LXIII Refs.

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Twelve. Remedies for Wrongful Governmental or Official Action

LXIII. In General

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2113, 2450, 2822 to 2824, 2871

A.L.R. Library

A.L.R. Index, Personal Property Tax
A.L.R. Index, Tax Assessors and Collectors
A.L.R. Index, Taxes
A.L.R. Index, Taxpayers
West's A.L.R. Digest, [Taxation](#)  2113, 2450, 2822 to 2824, 2871

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 33, 36, 56](#)

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72 Am. Jur. 2d State and Local Taxation § 961

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

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Part Twelve. Remedies for Wrongful Governmental or Official Action

LXIII. In General

§ 961. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#) 2113, 2450, 2822 to 2824, 2871

When a state tax statute is found unconstitutional under the Federal Constitution, a State is obligated to provide relief consistent with federal due process principles.¹ The Due Process Clause of the 14th Amendment to the Federal Constitution requires a State to provide postdeprivation retrospective relief, as well as prospective relief.² A State can satisfy such due process requirements by providing either a "predeprivation" process, such as authorizing taxpayers to bring suit to enjoin the imposition of a tax before its payment, or a "postdeprivation" process in instances where taxpayers must remit their tax payment before judicially challenging the tax.³ As long as state law complies with due process by providing a clear and certain remedy for the unlawful exaction of a tax, the states may determine whether to provide predeprivation process, e.g., an injunction, or instead to afford postdeprivation relief, e.g., a refund.⁴

To safeguard against the imposition of unlawful taxes, a State must provide its taxpayers with a fair opportunity to challenge the accuracy and legal validity of their tax obligation, and a defined remedy for any erroneous or unlawful tax collection, to insure that the opportunity to contest taxes is meaningful.⁵ Where a State requires a taxpayer challenging the legality of a tax to pay such tax first and then bring a postpayment refund action, the Due Process Clause requires that the State provide a meaningful, backward-looking relief to rectify any unconstitutional deprivation.⁶ A meaningful, backward-looking remedy entails an adequate form of predeprivation process.⁷ A taxpayer's failure to take advantage of statutory procedures enacted to protect the taxpayer's interests may constitute a waiver of his or her rights against the State.⁸

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Footnotes

1 American Trucking Associations, Inc. v. Smith, 496 U.S. 167, 110 S. Ct. 2323, 110 L. Ed. 2d 148 (1990).
2 McKesson Corp. v. Division of Alcoholic Beverages and Tobacco, Dept. of Business Regulation of Florida, 496 U.S. 18, 110 S. Ct. 2238, 110 L. Ed. 2d 17 (1990).
3 Matter of Hawaiian Flour Mills, Inc., 76 Haw. 1, 868 P.2d 419 (1994).
4 As to the right to a declaratory judgment on tax questions, see [Am. Jur. 2d, Declaratory Judgments §§ 101 to 105](#).
5 As to the right to mandamus as it relates to taxes and assessments, generally, see [Am. Jur. 2d, Mandamus §§ 252 to 254](#).
6 Batt v. City and County of San Francisco, 155 Cal. App. 4th 65, 65 Cal. Rptr. 3d 716 (1st Dist. 2007).
7 Matter of Hawaiian Flour Mills, Inc., 76 Haw. 1, 868 P.2d 419 (1994).
8 James B. Beam Distilling Co. v. State, 263 Ga. 609, 437 S.E.2d 782 (1993); *State ex rel. Paige v. Canady*, 189 W. Va. 650, 434 S.E.2d 10 (1993).
9 James B. Beam Distilling Co. v. State, 263 Ga. 609, 437 S.E.2d 782 (1993).
10 City of Springfield v. Allphin, 74 Ill. 2d 117, 23 Ill. Dec. 516, 384 N.E.2d 310 (1978).
11 As to conditions precedent to bringing a tax refund action, see [§ 985](#).

72 Am. Jur. 2d State and Local Taxation § 962

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Twelve. Remedies for Wrongful Governmental or Official Action

LXIII. In General

§ 962. Municipal liability

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2113, 2450, 2822 to 2824, 2871

Municipalities are not liable for wrongful or illegal acts of their tax collectors perpetrated in the course of public duties.¹ Prohibiting tort actions against the taxing municipality allows revenue collection to continue during litigation so that essential public services dependent on the funds are not unnecessarily interrupted.²

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Footnotes

¹ [Teddy's Drive In, Inc. v. Cohen](#), 47 N.Y.2d 79, 416 N.Y.S.2d 782, 390 N.E.2d 290 (1979).

As to the liability of tax assessors and collectors in their individual capacities, see §§ 963, 964.

² [Pacific Gas & Electric Co. v. State Bd. of Equalization](#), 27 Cal. 3d 277, 165 Cal. Rptr. 122, 611 P.2d 463 (1980); [Pellnat v. City of Buffalo](#), 59 A.D.2d 1038, 399 N.Y.S.2d 788 (4th Dep't 1977).

72 Am. Jur. 2d State and Local Taxation § 963

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Twelve. Remedies for Wrongful Governmental or Official Action

LXIII. In General

§ 963. Action against assessors

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#) 2113, 2450, 2822 to 2824, 2871

A.L.R. Library

[Propriety of class action in state courts to recover taxes](#), 10 A.L.R.4th 655

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 33](#) (Complaint, petition, or declaration—To enjoin collection of tax based on assessment by illegally employed private assessors—Class action)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 56](#) (Demand—For refund of property taxes paid under protest—Lack of taxing official's authority to assess property)

In evaluating real estate for tax assessments, a tax assessor exercises a judicial or quasi-judicial function involving discretion and judgment, and as long as the assessor remains within his or her lawful authority, the assessor is immune from private suits for damages resulting from valuating such property at an excessive amount regardless of motive.¹

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Footnotes

1 [Mills v. Smith, 1960 OK 193, 355 P.2d 1064, 82 A.L.R.2d 1144 \(Okla. 1960\).](#)
As to civil liability of public officers, generally, see [Am. Jur. 2d, Public Officers and Employees §§ 295 to 306.](#)

End of Document

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72 Am. Jur. 2d State and Local Taxation § 964

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

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Part Twelve. Remedies for Wrongful Governmental or Official Action

LXIII. In General

§ 964. Action against collectors

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#) 2113, 2450, 2822 to 2824, 2871

A.L.R. Library

[Personal liability of tax collector of state or its subdivision for illegal taxes collected, 14 A.L.R.2d 383](#)

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 36](#) (Complaint, petition or declaration—To enjoin collection of personal property tax based on fraudulently excessive valuation—To recover personal property seized by collection official)

A municipal tax collector, who collects or receives an illegal tax or a tax illegally assessed to the taxpayer, is not personally liable to the taxpayer for the amount of the tax where the collector holds a facially valid warrant issued by the proper taxing authority.¹ A claim against a tax collector, who is sued individually, is unmaintainable if it fails to aver that the collector committed any wrongful acts or misused the position or power as a collector.²

However, if a tax officer unlawfully attempts to enforce the payment of taxes, such person ceases to be an officer of the law and becomes a private wrongdoer, and an action may be brought against the tax officer personally.³ A warrant will not protect a collector who acts outside the scope of the warrant.⁴

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Footnotes

1 [Zientek v. State](#), 222 A.D.2d 1041, 635 N.Y.S.2d 893 (4th Dep't 1995).

2 [Long v. Kistler](#), 524 F. Supp. 225 (E.D. Pa. 1981).

3 [Matthews v. Rodgers](#), 284 U.S. 521, 52 S. Ct. 217, 76 L. Ed. 447 (1932).

4 [Oakley Country Club v. Long](#), 325 Mass. 109, 89 N.E.2d 260, 14 A.L.R.2d 377 (1949).

End of Document

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72 Am. Jur. 2d State and Local Taxation Twelve LXIV A Refs.

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Twelve. Remedies for Wrongful Governmental or Official Action

LXIV. Refunding or Recovery Back of Illegal Tax Paid

A. In General

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2773

A.L.R. Library

A.L.R. Index, Personal Property Tax
A.L.R. Index, Tax Assessors and Collectors
A.L.R. Index, Taxes
A.L.R. Index, Taxpayers
West's A.L.R. Digest, [Taxation](#)  2773

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 54, 55](#)

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72 Am. Jur. 2d State and Local Taxation § 965

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

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Part Twelve. Remedies for Wrongful Governmental or Official Action

LXIV. Refunding or Recovery Back of Illegal Tax Paid

A. In General

§ 965. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#) 2773

A.L.R. Library

[Recovery of Sales Taxes Paid on Bad Debts, 38 A.L.R.6th 255](#)

[Recovery of tax paid on exempt property, 25 A.L.R.4th 186](#)

[Propriety of class action in state courts to recover taxes, 10 A.L.R.4th 655](#)

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 54](#) (Petition or application—For refund of taxes based on invalid assessment)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 55](#) (Petition or application—For refund of personal property taxes paid under mistake concerning validity of tax statute)

Erroneous tax assessments which may be remedied under a property tax refund statute include clerical errors,¹ assessments of tax-exempt property,² and assessments based on the wrong millage rate.³ A refund action is available whenever taxes have been paid more than once, erroneously or illegally collected, or illegally assessed or levied.⁴ However, claims based on mere dissatisfaction with the assessment or on the assertion that the assessors used correct procedures but did not take into account matters which the taxpayer believes should have been considered is not one for which a refund action will lie.⁵ Thus, taxes assessed based on a property valuation which was correct as of the valuation date are not "erroneously or illegally collected" within the meaning of a statute entitling taxpayers to a refund of taxes which have been erroneously or illegally collected.⁶ The terms "overpayment" and "erroneous" as used in statutes authorizing refunds of overpayments or erroneous payments of taxes include the term "illegal" and include taxes which are paid under an unconstitutional statute.⁷ A taxpayer who discovers that he or she mistakenly overpaid property taxes, and who makes a timely claim, may be entitled to a refund if the overpayment is simply verified by an audit.⁸

Generally, once a tax is held invalid under state law, the government must refund the money collected.⁹ There is also authority that a taxpayer may recover a tax refund only if he or she shows that more tax has been exacted than in equity, and good conscience should have been paid.¹⁰

CUMULATIVE SUPPLEMENT

Cases:

Absent special circumstances, a taxpayer is not entitled to a refund of illegal taxes unless the refund is authorized by law. *Zweig v. Metropolitan St. Louis Sewer Dist.*, 412 S.W.3d 223 (Mo. 2013).

Statutory provision for abatement or refund of real property tax when error has been made...in entering the valuation of the real property applied only to clerical errors, and thus it did not provide basis for abatement and refund of overpayment that resulted from county's erroneous fee-simple valuation of property owned by federal government in which taxpayer held only leasehold interest. *S.D. Codified Laws § 10-18-1(1). Matter of 2012, 2013 and 2014 Tax Refund and Abatement Appeal of Hunt Companies, Inc.*, 2019 SD 26, 927 N.W.2d 894 (S.D. 2019).

[END OF SUPPLEMENT]

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Footnotes

- 1 *Saunders Properties v. Municipality of Anchorage*, 846 P.2d 135 (Alaska 1993); *Wirt v. Esrey*, 233 Kan. 300, 662 P.2d 1238 (1983).
- 2 *American Hardware Supply Co., Inc. v. Whitmire*, 278 S.C. 607, 300 S.E.2d 289 (1983); *IBM Credit Corp. v. Village of Allouez*, 188 Wis. 2d 143, 524 N.W.2d 132 (1994).
- 3 *National Health Network, Inc. v. Fulton County*, 270 Ga. 724, 514 S.E.2d 422 (1999).
- 4 *Rickley v. County of Los Angeles*, 114 Cal. App. 4th 1002, 8 Cal. Rptr. 3d 406 (2d Dist. 2004).
- 5 *National Health Network, Inc. v. Fulton County*, 270 Ga. 724, 514 S.E.2d 422 (1999); *Buck v. Leggett*, 813 S.W.2d 872 (Mo. 1991).
- 6 *CIG Exploration, Inc. v. Utah State Tax Com'n*, 897 P.2d 1214 (Utah 1995).
- 7 *U.S. on Behalf of Cheyenne River Sioux Tribe v. State of S.D.*, 105 F.3d 1552 (8th Cir. 1997); *National Health Network, Inc. v. Fulton County*, 270 Ga. 724, 514 S.E.2d 422 (1999).
- 8 *Saunders Properties v. Municipality of Anchorage*, 846 P.2d 135 (Alaska 1993).

9 Copper Hills Enterprises, Ltd. v. Arizona Dept. of Revenue, 214 Ariz. 386, 153 P.3d 407 (Ct. App. Div. 1 2007).

10 Apple, Inc. v. Franchise Tax Bd., 199 Cal. App. 4th 1, 132 Cal. Rptr. 3d 401 (1st Dist. 2011), review denied, (Jan. 4, 2012).

End of Document

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72 Am. Jur. 2d State and Local Taxation § 966

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

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Part Twelve. Remedies for Wrongful Governmental or Official Action

LXIV. Refunding or Recovery Back of Illegal Tax Paid

A. In General

§ 966. Statutory remedy

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#) 2773

Common law authorizes a tax refund when the taxing statute is invalid and the tax payments were submitted involuntarily, or the taxing authority has engaged in misrepresentation.¹ Statutes establishing a special method to enable a taxpayer who questions the validity of a tax to sue the State in an effort to recover taxes paid under protest create a right nonexistent at common law and prescribe a remedy to enforce that right, and the courts may act only in the manner provided by such statutes.² A taxing authority's obligation to issue a property tax refund is mandatory only if statutory requirements have been met.³ Where the state constitution vests the legislature with plenary control over the manner in which tax refunds may be obtained, a party must show strict, rather than substantial, compliance with the administrative procedures established by the legislature.⁴ Also, statutory limitations periods are mandatory and absolute.⁵

Statutory ambiguities relating to tax refunds and remedial refund statutes must be construed liberally in favor of the taxpayer.⁶ Thus, overpayments of a property tax caused by a municipality's errors can be corrected by payment of refunds at the governing body's discretion without reference to the limitations period for correction of errors made by taxpayers despite the municipality's interest in administrative convenience from limiting the time frame for payment of refunds.⁷

A statute that permits taxpayers to pay disputed taxes under protest, and to seek the refund of those taxes by filing suit in the circuit court within a specified number of days after payment of the taxes, is intended not only to furnish proof that the payment was involuntarily made but also to warn the tax collector that the tax is claimed to be illegal.⁸

Footnotes

1 [Maximum Mach. Co., Inc. v. City of Shepherdsville](#), 17 S.W.3d 890 (Ky. 2000).
As to the character of payments as voluntary, see § 969.
As to the character of payments as involuntary, see § 970.

2 [Community Federal Sav. & Loan Ass'n v. Director of Revenue](#), 796 S.W.2d 883 (Mo. 1990); [County of Washoe v. Golden Road Motor Inn, Inc.](#), 105 Nev. 402, 777 P.2d 358 (1989).

3 [Hormel v. Maricopa County](#), 224 Ariz. 454, 232 P.3d 768 (Ct. App. Div. 1 2010), review denied, (Nov. 30, 2010).

4 [JPMorgan Chase Bank, N.A. v. City and County of San Francisco](#), 174 Cal. App. 4th 1201, 94 Cal. Rptr. 3d 906 (1st Dist. 2009).

5 [National CSS, Inc. v. City of Stamford](#), 195 Conn. 587, 489 A.2d 1034 (1985); [Coca-Cola Bottling Corp. v. Lindley](#), 54 Ohio St. 2d 1, 8 Ohio Op. 3d 1, 10 Ohio Op. 3d 254, 374 N.E.2d 400 (1978).

6 [Gates Rubber Co. v. State Bd. of Equalization of State of Colo.](#), 770 P.2d 1189 (Colo. 1989); [Playmates Toys, Inc. v. Director, Div. of Taxation](#), 162 N.J. 186, 742 A.2d 968 (1999).

7 [Saunders Properties v. Municipality of Anchorage](#), 846 P.2d 135 (Alaska 1993).

8 [Ford Motor Credit Co. v. St. Charles County Collector of Revenue](#), 172 S.W.3d 826 (Mo. Ct. App. E.D. 2005).

72 Am. Jur. 2d State and Local Taxation § 967

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Twelve. Remedies for Wrongful Governmental or Official Action

LXIV. Refunding or Recovery Back of Illegal Tax Paid

A. In General

§ 967. Who may recover

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#) 2773

As a rule, a non-taxpayer may not sue for a refund of taxes paid by another,¹ and the party entitled to a refund of a tax illegally exacted is the party who made the tax payment.² Where a tax is imposed on a dealer, recovery is permitted against the taxing authorities, assuming that the tax is otherwise recoverable,³ even where the burden of the tax is passed on to the consumers as part of the price paid for the article.⁴

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Footnotes

¹ [Montana v. Crow Tribe of Indians](#), 523 U.S. 696, 118 S. Ct. 1650, 140 L. Ed. 2d 898 (1998).

² [Atlanta Americana Motor Hotel Corp. v. Undercofler](#), 222 Ga. 295, 149 S.E.2d 691 (1966).

As to persons entitled to institute and maintain a taxpayer's action, generally, see [Am. Jur. 2d, Taxpayers' Actions](#) §§ 3, 4.

³ [Newlin v. Liberty Oil Co.](#), 167 La. 831, 120 So. 383 (1929).

⁴ [State v. Sunburst Refining Co.](#), 76 Mont. 472, 248 P. 186, 47 A.L.R. 969 (1926).

72 Am. Jur. 2d State and Local Taxation Twelve LXIV B Refs.

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Twelve. Remedies for Wrongful Governmental or Official Action

LXIV. Refunding or Recovery Back of Illegal Tax Paid

B. Action to Recover Back Taxes Paid

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2776 to 2781, 2783 to 2792

A.L.R. Library

A.L.R. Index, Personal Property Tax
A.L.R. Index, Tax Assessors and Collectors
A.L.R. Index, Taxes
A.L.R. Index, Taxpayers
West's A.L.R. Digest, [Taxation](#)  2776 to 2781, 2783 to 2792

Trial Strategy

[Taxpayer Actions: Recovering Costs in Tax Controversies](#), 27 Am. Jur. Proof of Facts 3d 153

Forms

[Am. Jur. Legal Forms 2d](#) §§ 238:12 to 238:14

Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 55, 56, 60 to 80

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72 Am. Jur. 2d State and Local Taxation § 968

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

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Part Twelve. Remedies for Wrongful Governmental or Official Action

LXIV. Refunding or Recovery Back of Illegal Tax Paid

B. Action to Recover Back Taxes Paid

§ 968. Claims for refunds

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#) 2776 to 2781, 2783 to 2792

A.L.R. Library

[Construction and Operation of Statutory Time Limit for Filing Claim for State Tax Refund, 14 A.L.R.6th 119](#)
[Validity and Applicability of Statutory Time Limit Concerning Taxpayer's Claim for State Tax Refund, 1 A.L.R.6th 1](#)

Trial Strategy

[Taxpayer Actions: Recovering Costs in Tax Controversies, 27 Am. Jur. Proof of Facts 3d 153](#)

Forms

[Am. Jur. Legal Forms 2d § 238:13 \(Claim for refund of state taxes\)](#)

Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 60 to 80 (Refund or recovery of tax payments—Judicial relief)

While the courts in some jurisdictions liberally construe claims for a refund of taxes,¹ in other jurisdictions, public policy discourages suits for the refund of taxes erroneously paid or illegally collected and favors certainty in the collection of revenue.² Because the actions of a taxing authority are presumed to be correct and regular, they will not be disturbed if there is substantial evidence in the administrative record to support them; the taxpayer must overcome the presumption of correctness of the assessment by presenting evidence of assessment impropriety.³ When a statute provides a procedure to be used for the recovery of taxes, the taxpayer must comply with the statutory provisions to enable a court to order a refund.⁴ Once paid, taxes can only be recovered through proper statutory proceedings, and the statutes must be adhered to.⁵

The actual payment of money as taxes to the taxing authority is an irrefutable element of entitlement to a tax refund.⁶ A party's claim of overassessment of taxes, without having ever paid such alleged overassessment, cannot result in the party's recovery against the taxing authority.⁷

Generally, the limitations period under a statute providing for a refund of taxes paid is deemed to run from the date of payment.⁸ For property tax refund claims subject to a specified claims filing period, failure to file a refund claim within that period deprives a court of jurisdiction to consider the issue.⁹ Indeed, it is doubtful that state courts may apply the judicially created doctrine of equitable tolling to alter state tax refund procedures established by the legislature pursuant to its constitutional grant of power.¹⁰

Governmental immunity will not defeat a claim for declaratory or injunctive relief seeking the refund of illegally collected taxes or fees if the plaintiff alleges that the payments were made as a result of fraud, mutual mistake of fact, or duress, whether express or implied.¹¹

In the absence of an express statutory provision against assignment of claims against the government, the assignability of a claim for tax refund is sustained by the weight of authority¹² although there is authority holding to the contrary.¹³

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Footnotes

- 1 Korean Air Lines Co., Ltd. v. County of Los Angeles, 162 Cal. App. 4th 552, 76 Cal. Rptr. 3d 26 (2d Dist. 2008).
- 2 Lane v. Lensmeyer, 158 S.W.3d 218, 197 Ed. Law Rep. 422 (Mo. 2005).
- 3 May Department Stores Co. v. County of Los Angeles, 196 Cal. App. 3d 755, 242 Cal. Rptr. 162 (2d Dist. 1987).
- 4 Wexler v. Wirtz Corp., 211 Ill. 2d 18, 284 Ill. Dec. 294, 809 N.E.2d 1240 (2004).
- 5 S & P Properties, Inc. v. City of University City, 178 S.W.3d 579 (Mo. Ct. App. E.D. 2005).
- 6 Brookmar Corp. v. Tax Com'r of City of New York, 13 Misc. 3d 772, 827 N.Y.S.2d 467 (Sup 2006).
- 7 Brookmar Corp. v. Tax Com'r of City of New York, 13 Misc. 3d 772, 827 N.Y.S.2d 467 (Sup 2006).
- 8 Alvarez v. Pappas, 229 Ill. 2d 217, 321 Ill. Dec. 712, 890 N.E.2d 434 (2008); St. Ledger v. Com., Revenue Cabinet, 942 S.W.2d 893 (Ky. 1997), as modified on denial of reh'g, (Apr. 24, 1997); Budget Rent-A-Car of Tulsa v. State ex rel. Oklahoma Tax Com'n, 1989 OK 67, 773 P.2d 736 (Okla. 1989).

9 JPMorgan Chase Bank, N.A. v. City and County of San Francisco, 174 Cal. App. 4th 1201, 94 Cal. Rptr. 3d 906 (1st Dist. 2009).

10 JPMorgan Chase Bank, N.A. v. City and County of San Francisco, 174 Cal. App. 4th 1201, 94 Cal. Rptr. 3d 906 (1st Dist. 2009).

11 Gatesco, Inc. Ltd. v. City of Rosenberg, 312 S.W.3d 140 (Tex. App. Houston 14th Dist. 2010).
As to claims that payment made under mistake, see § 972.
As to claims that payment made under threat or duress, see § 973.

12 People ex rel. Stone v. Nudelman, 376 Ill. 535, 34 N.E.2d 851, 134 A.L.R. 1198 (1940); People ex rel. Stone v. Nudelman, 376 Ill. 535, 34 N.E.2d 851, 134 A.L.R. 1198 (1940).

13 People ex rel. Western Union Tel. Co. v. Roberts, 30 A.D. 78, 51 N.Y.S. 747 (3d Dep't 1898), aff'd, 156 N.Y. 693, 51 N.E. 1093 (1898).

72 Am. Jur. 2d State and Local Taxation § 969

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

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Part Twelve. Remedies for Wrongful Governmental or Official Action

LXIV. Refunding or Recovery Back of Illegal Tax Paid

B. Action to Recover Back Taxes Paid

§ 969. Voluntary payments, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#) 2776, 2777

A.L.R. Library

[Voluntary Payment Doctrine as Bar To Recovery of Payment of Generally Unlawful Tax, 1 A.L.R.6th 229](#)

Generally, a tax voluntarily paid may not be recovered¹ even if the taxing body assessed or imposed the tax illegally² and even if the payment was made under protest.³ Voluntary tax payments can only be recovered if such recovery is authorized by statute.⁴ Stated somewhat differently, ordinarily, in the absence of any statutory right permitting recovery, a voluntary payment of a tax made under a statute which is later declared unconstitutional cannot be recovered.⁵

There is authority holding that the "voluntary payment" doctrine does not apply in tax refund actions⁶ and that the State need not refund taxes voluntarily paid, but illegally collected, even though it shocks the equitable conscience.⁷ In other words, under the "voluntary payment" doctrine, if a taxpayer voluntarily tenders a tax, assessment, or exaction, he or she is generally not entitled to a refund except as provided for by statute.⁸ The voluntary payment rule, under which a person who pays a tax voluntarily and without duress does not have a valid claim for its repayment even if the tax is later held to be unlawful, protects the government from threats to financial security that can arise from unpredictable revenue shortfalls and supports the age-old policy of discouraging litigation with the government.⁹

Generally, if a taxpayer pays an illegal tax, with knowledge of facts sufficient to frame a protest, and if the payments were not made under duress or compulsion, the payment is deemed to be voluntary and cannot be recovered.¹⁰ The payment of taxes prior to filing an action seeking recovery of such payments is considered voluntary¹¹ as is the payment of taxes without timely claiming an applicable exemption.¹² A voluntary payment of an invalid tax does not constitute a waiver or ratify the tax if a timely application for a refund is filed in accordance with statutory mandates.¹³ However, a taxpayer who fails to comply substantially with the statutory requirements is considered to have voluntarily paid the tax and is precluded from recovering a refund at a later date.¹⁴

CUMULATIVE SUPPLEMENT

Cases:

When the levy of an illegal tax may become a cloud on the title to real property, payment of the tax to avoid the cloud or to avoid the imposition of a substantial burden on property rights is not a voluntary payment, and therefore a refund of the payment is not precluded pursuant to the voluntary payment defense. *Discount Sleep of Ocala, LLC v. City of Ocala*, 300 So. 3d 316 (Fla. 5th DCA 2020), review denied, 2020 WL 6708663 (Fla. 2020).

Construction of tax refund provisions against the taxpayer is consistent with the general rule that the state's sovereign immunity shields it from refunding taxes voluntarily paid, even if illegally collected, and refund statutes are limited waivers of sovereign immunity to allow the recovery of money wrongly collected. *Insurance Co. of State of Pa. v. Director of Revenue and Director of Ins.*, 269 S.W.3d 32 (Mo. 2008).

Under section of statute governing exemption from local property taxes on dwelling house of a totally disabled veteran, providing that a municipality "may return" taxes collected on property had a proper claim been made, township had discretion to grant or deny taxpayer a retroactive refund of property taxes that he had paid from effective date of his disability as determined by the United States Department of Veterans Affairs (VA). *N.J.S.A. 54:4-3.32. Del Priore v. Edison Tp.*, 26 N.J. Tax 502, 2012 WL 2384250 (Super. Ct. Law Div. 2012).

Taxpayer was not entitled to refund of real property taxes paid on fiber optic cable installations it owned, where there was nothing indicating that such payments were made involuntarily or under protest. *McKinney's RPTL § 556. Level 3 Communications, LLC v. Chautauqua County*, 148 A.D.3d 1702, 50 N.Y.S.3d 202 (4th Dep't 2017).

Statutory provision for abatement or refund of real property tax when taxes have been erroneously paid did not refer to taxes that were paid on incorrect valuation, but rather those that were paid due to unintended mistake, such as when taxpayer accidentally paid taxes of another, and thus provision did not furnish basis for abatement and refund of overpayment that resulted from county's erroneous fee-simple valuation of property owned by federal government in which taxpayer held only leasehold interest. *S.D. Codified Laws § 10-18-1(5). Matter of 2012, 2013 and 2014 Tax Refund and Abatement Appeal of Hunt Companies, Inc.*, 2019 SD 26, 927 N.W.2d 894 (S.D. 2019).

[END OF SUPPLEMENT]

1 Acme Markets, Inc. v. Callanan, 236 Ill. 2d 29, 337 Ill. Dec. 867, 923 N.E.2d 718 (2009); Neama v. Town of Babylon, 18 A.D.3d 836, 796 N.Y.S.2d 644 (2d Dep't 2005); Comcast of Oregon II, Inc. v. City of Eugene, 211 Or. App. 573, 155 P.3d 99 (2007), aff'd on other grounds, 346 Or. 238, 209 P.3d 800 (2009).

2 Acme Markets, Inc. v. Callanan, 236 Ill. 2d 29, 337 Ill. Dec. 867, 923 N.E.2d 718 (2009).

3 Comcast of Oregon II, Inc. v. City of Eugene, 211 Or. App. 573, 155 P.3d 99 (2007), aff'd on other grounds, 346 Or. 238, 209 P.3d 800 (2009).

4 Elzea v. Perry, 340 Ark. 588, 12 S.W.3d 213 (2000); Acme Markets, Inc. v. Callanan, 236 Ill. 2d 29, 337 Ill. Dec. 867, 923 N.E.2d 718 (2009).

5 Standard Distributing, Inc. v. City of Charleston, 218 W. Va. 543, 625 S.E.2d 305 (2005).

6 Fulton County v. T-Mobile, South, LLC, 305 Ga. App. 466, 699 S.E.2d 802 (2010).

7 Lane v. Lensmeyer, 2004 WL 1098947 (Mo. Ct. App. W.D. 2004), as modified, (June 29, 2004) and transferred to Mo. S. Ct., 158 S.W.3d 218, 197 Ed. Law Rep. 422 (Mo. 2005).

8 Berrum v. Otto, 255 P.3d 1269, 127 Nev. Adv. Op. No. 30 (Nev. 2011) (stating that the purpose of the voluntary payment doctrine is to encourage stability and certainty for the taxing entity).

9 Lowenberg, v. City of Dallas, 261 S.W.3d 54 (Tex. 2008).

10 Getto v. City of Chicago, 86 Ill. 2d 39, 55 Ill. Dec. 519, 426 N.E.2d 844 (1981); First Bank of Buffalo v. Conrad, 350 N.W.2d 580 (N.D. 1984).

11 Oxford v. Perry, 340 Ark. 577, 13 S.W.3d 567 (2000).

12 Rutherford v. Barnes, 312 Ark. 177, 847 S.W.2d 689 (1993).

13 Independent School Dist. No. 9 of Tulsa County v. Glass, 1982 OK 2, 639 P.2d 1233, 2 Ed. Law Rep. 579 (Okla. 1982).

14 Rauert v. School Dist. 1-R of Hall County, 251 Neb. 135, 555 N.W.2d 763, 114 Ed. Law Rep. 628 (1996).

72 Am. Jur. 2d State and Local Taxation § 970

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Twelve. Remedies for Wrongful Governmental or Official Action

LXIV. Refunding or Recovery Back of Illegal Tax Paid

B. Action to Recover Back Taxes Paid

§ 970. Involuntary payments, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#) 2776, 2777, 2779

A.L.R. Library

[Payment of taxes to prevent closing of, or interference with, business as involuntary so as to permit recovery, 80 A.L.R.2d 1040](#)

The question of whether the payment of a tax or fee is "involuntary" in the context of an action for reimbursement of taxes is one of intent and is resolved by considering the totality of the circumstances.¹ A taxpayer is deemed to have paid taxes involuntarily, for purposes of the voluntary-payment doctrine under which a taxpayer cannot recover taxes voluntarily paid even if the taxes were illegal, where: (1) the taxpayer lacked knowledge of the facts upon which to protest the taxes at the time when he or she paid the taxes, or (2) the taxpayer paid the taxes under duress.²

To recover taxes paid under a common-law refund theory, the parties seeking the refund of the tax must prove that they paid the tax involuntarily.³ Once the taxpayer establishes that the taxes were paid involuntarily, the taxpayer may recover the overpayment in a timely action.⁴

Taxes paid by property owners after filing a complaint alleging that such taxes were an illegal exaction are deemed to be taxes paid under protest, and the property owners may seek a refund of those taxes.⁵ Where an invalid tax is enforceable in a summary proceeding or a burdensome penalty can be exacted for failure to pay, the law presumes the payment to have been made involuntarily and permits recovery.⁶ Thus, the payment of an illegal tax in order to avoid forfeiture of the right to do business is an involuntary payment.⁷

There is a conflict in the authorities on the question of whether the existence of another remedy or means of relief will render a payment of taxes voluntary where the taxpayer neglects to use such remedy; thus, according to the general rule that a payment is involuntary if the compulsion on the taxpayer is of such a nature that there is no other reasonable means of immediate relief from the same, except by making the payment,⁸ where the taxpayer has some other legal remedy or protection against the coercion of the collecting officer, the taxpayer must take such action, or the tax payment is deemed voluntary.⁹ However, there is also a line of contrary authority holding that the mere existence of another remedy or means of relief will not render voluntary a payment of taxes which would otherwise be deemed involuntary.¹⁰

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Footnotes

- 1 *Video Aid Corp. v. Town of Wallkill*, 85 N.Y.2d 663, 628 N.Y.S.2d 18, 651 N.E.2d 886 (1995).
- 2 *Raintree Homes, Inc. v. Village of Long Grove*, 389 Ill. App. 3d 836, 329 Ill. Dec. 553, 906 N.E.2d 751 (2d Dist. 2009).
- 3 As to payment of taxes under duress, see § 973.
- 4 *Private Truck Council of America, Inc. v. State*, 128 N.H. 466, 517 A.2d 1150 (1986); *Video Aid Corp. v. Town of Wallkill*, 85 N.Y.2d 663, 628 N.Y.S.2d 18, 651 N.E.2d 886 (1995).
- 5 *City of Rochester v. Chiarella*, 65 N.Y.2d 92, 490 N.Y.S.2d 174, 479 N.E.2d 810 (1985).
- 6 *Worth v. City of Rogers*, 341 Ark. 12, 14 S.W.3d 471 (2000).
- 7 *Maximum Mach. Co., Inc. v. City of Shepherdsville*, 17 S.W.3d 890 (Ky. 2000); *Community Federal Sav. & Loan Ass'n v. Director of Revenue*, 752 S.W.2d 794, 47 Ed. Law Rep. 1220 (Mo. 1988).
- 8 *Continental Trailways, Inc. v. Director, Div. of Motor Vehicles*, 102 N.J. 526, 509 A.2d 769 (1986); *Video Aid Corp. v. Town of Wallkill*, 85 N.Y.2d 663, 628 N.Y.S.2d 18, 651 N.E.2d 886 (1995).
- 9 *Chapman & Dewey Land Co. v. Board of Directors of St. Francis Levee Dist.*, 172 Ark. 414, 288 S.W. 910 (1926); *Monaghan v. Lewis*, 21 Del. 218, 5 Penne. 218, 59 A. 948 (1905).
- 10 *Spring Valley Coal Co. v. State*, 198 Ind. 620, 154 N.E. 380 (1926); *Johnson v. Crook County*, 53 Or. 329, 100 P. 294 (1909).
- 10 *Ottawa University v. Board of Com'rs of Franklin County*, 85 Kan. 246, 116 P. 892 (1911); *Adrico Realty Corp. v. City of New York*, 250 N.Y. 29, 164 N.E. 732, 64 A.L.R. 1 (1928).

72 Am. Jur. 2d State and Local Taxation § 971

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

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Part Twelve. Remedies for Wrongful Governmental or Official Action

LXIV. Refunding or Recovery Back of Illegal Tax Paid

B. Action to Recover Back Taxes Paid

§ 971. Payment under protest

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#) 2776, 2781, 2783, 2785

Forms

[Am. Jur. Legal Forms 2d § 238:12 \(Protest—Of tax payment\)](#)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 56 \(Demand—For refund of property taxes paid under protest—Lack of taxing official's authority to assess property\)](#)

The payment of taxes under protest is the best evidence of an unwillingness to pay so as to preclude application of the voluntary payment doctrine.¹ Payment of a tax under protest is not required for the refund of an illegal tax unless required by statute.² Absent explicit authorization from the legislature, the judiciary has no power to refund taxes paid without protest; tax refunds are a matter of legislative discretion.³ Under some state statutes, the written protest and notice of intention to sue provisions are mandatory and must be strictly adhered to in order to maintain an action for recovery of allegedly wrongfully collected taxes.⁴ Thus, a taxpayer's failure to follow the mandate of a statute governing tax protests bars the taxpayer's claim of impropriety of any part of the taxes paid by the taxpayer.⁵

The purpose of the statute allowing taxpayers to pay disputed property taxes under protest and to seek a refund of those taxes is to furnish an adequate and sufficient remedy to the taxpayer and to warn the tax collector that the tax is claimed to be illegal.⁶

Payment under protest is required before seeking relief under a statute relating to challenges against taxes assessed, so that the taxpayer can make it known that he or she is paying involuntarily and can alert the taxing authority to the amount of the refund claimed, in order that the challenged tax can be segregated and held until the resolution of the dispute.⁷ Failure to register a formal protest of payment of tax which is later declared illegal can be excused in cases in which the payments are made under duress or coercion.⁸

The recovery of a protested tax under a common-law refund theory requires that the State be given a fair warning of the taxpayer's protest.⁹ Sovereign immunity does not bar a common-law claim for refund of taxes paid when the State has been given a fair notice of the protest.¹⁰ A protest at the time of payment provides the government with notice of the claimed illegality; thus, the "protest" must notify the State that the payor believes the levy to be illegal and must also signal that the payor intends to seek a refund of the moneys illegally levied.¹¹

CUMULATIVE SUPPLEMENT

Cases:

Generally, a taxpayer may not seek to obtain a refund of a tax, whether legal or not, without having lodged a protest to payment of the same. [In re Certified Question of Law, 320 P.3d 1236 \(Idaho 2014\)](#).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Hoyle v. Faucher, 334 Ark. 529, 975 S.W.2d 843 \(1998\); Video Aid Corp. v. Town of Wallkill, 85 N.Y.2d 663, 628 N.Y.S.2d 18, 651 N.E.2d 886 \(1995\).](#)
- 2 [Carrillo v. City of Ocean Shores, 122 Wash. App. 592, 94 P.3d 961 \(Div. 2 2004\).](#)
- 3 [Petitioners I-549 v. Missoula Irrigation Dist., 2005 MT 100, 326 Mont. 527, 111 P.3d 664 \(2005\).](#)
- 4 [Mertz v. Pappas, 320 Ark. 368, 896 S.W.2d 593 \(1995\); Council House Redevelopment Corp. v. Hill, 920 S.W.2d 890 \(Mo. 1996\).](#)
- 5 [Adams v. Friganza, 344 S.W.3d 240 \(Mo. Ct. App. E.D. 2011\), reh'g and/or transfer denied, \(July 12, 2011\) and transfer denied, \(Aug. 30, 2011\).](#)
- 6 [Herky, LLC v. Holman, 277 S.W.3d 702 \(Mo. Ct. App. E.D. 2008\).](#)
- 7 [Lane v. Lensmeyer, 158 S.W.3d 218, 197 Ed. Law Rep. 422 \(Mo. 2005\).](#)
- 8 [City of Rochester v. Chiarella, 58 N.Y.2d 316, 461 N.Y.S.2d 244, 448 N.E.2d 98 \(1983\).](#)
- 9 [Principal Mut. Life Ins. Co. v. State, Div. of Ins. Dept. of Commerce and Economic Development, 780 P.2d 1023 \(Alaska 1989\); Private Truck Council of America, Inc. v. State, 128 N.H. 466, 517 A.2d 1150 \(1986\).](#)
- 10 [Private Truck Council of America, Inc. v. State, 128 N.H. 466, 517 A.2d 1150 \(1986\).](#)
- 11 [Era Aviation, Inc. v. Campbell, 915 P.2d 606 \(Alaska 1996\).](#)

72 Am. Jur. 2d State and Local Taxation § 972

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

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Part Twelve. Remedies for Wrongful Governmental or Official Action

LXIV. Refunding or Recovery Back of Illegal Tax Paid

B. Action to Recover Back Taxes Paid

§ 972. Payment under mistake

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#) 2776, 2778, 2779

A.L.R. Library

[Recovery of tax paid on exempt property, 25 A.L.R.4th 186](#)

Forms

[Am. Jur. Legal Forms 2d § 238:14 \(Claim for exemption—Property owned by charitable institution\)](#)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 55 \(Petition or application—For refund of personal property taxes paid under mistake concerning validity of tax statute\)](#)

As a matter of common law, taxes, fees, or other governmental charges voluntarily paid under a mistake of law cannot be recovered unless a statutory provision authorizes it.¹ When the payment of a tax or fee which is later declared illegal is made under a mistake of law, with actual or constructive knowledge of the facts, the taxpayer must demonstrate that such payment was made involuntarily in order to be able to recover.²

Some statutes providing for a refund of taxes "erroneously or illegally charged" are inapplicable to actions to recover taxes paid under protest on the grounds that an error in judgment as to the valuation of property, resulting in an excess assessment, is not a "mistake" under the statute.³ However, other statutes provide that a taxpayer who erroneously pays a tax through a mistake of law has the same rights as a taxpayer who has erroneously paid a tax through an error of computation.⁴

"Mistakenly or erroneously paid" taxes, as could be challenged as illegal or invalid, means taxes that were not owed at the time that they were paid as compared to taxes lawfully and properly assessed.⁵ Excessive assessments, or those that are erroneously assessed in their entirety, based on mistakes of judgment do not result in illegal or invalid taxes.⁶

An erroneous tax involuntarily paid due to a mistake of fact may be recovered.⁷ Taxes on property that are subsequently determined to be exempt, when paid without protest, are not "erroneously or mistakenly paid" so as to justify a refund.⁸

An erroneous tax assessment, which may be remedied under a tax refund statute, includes clerical errors and assessments based on the wrong millage rate but not assessments based on errors in judgment.⁹ A mechanical error which led to an overpayment of taxes, when made by the taxing authority, is a clerical error rather than a valuation error.¹⁰ Where a taxpayer controls all the material facts, there can be no error of fact to support a claim for refund; a fact is material when it, alone or in part, causes a tax to be statutorily due and payable.¹¹ Thus, a taxpayer may be entitled to a refund of taxes "mistakenly or erroneously paid" where an assessor fails to provide the taxpayer with notice of increased valuation, thereby rendering the increase invalid.¹²

A statute requiring an abatement of taxes erroneously levied due at least in part to clerical errors by the taxing authority precludes recovery when the error is due solely to the taxpayer.¹³ However, the "clerical error" statutory basis for a property tax abatement and refund has been held applicable to taxpayer errors, including errors made by third parties.¹⁴

The terms "error" and "mistake" as used in the statute regarding ad valorem personal property tax refunds do not include intentional dishonest acts, and thus, a corporate taxpayer that had intentionally listed numerous fictitious items of personal property and assigned fabricated values to those items on its tax returns as part of a scheme to artificially inflate the company's reported earnings is not entitled to a refund for taxes paid on fictitious property.¹⁵ On the other hand, a taxpayer's failure to claim certain ad valorem tax exemptions to which it was entitled under a tax abatement agreement and for which it subsequently sought a refund has been held to constitute a "mistake" or "error," for purposes of the statute providing that a taxpayer is entitled, upon the filing of an appropriate application and subject to a specified limitations period, to a refund of taxes paid that were not due upon the property of the taxpayer, if the payment was made through a mistake or error, where there was no evidence that the taxpayer intentionally chose to reject the tax exemptions or that it received some benefit by failing to list its property as exempt such that an inference of such intent could arise.¹⁶

A "mutual mistake of fact" as used in a statute entitling a taxpayer to recover excess taxes paid because of a mutual mistake of fact made by the assessing officer and the taxpayer is an erroneous belief, which is shared and relied on by both parties, about a material fact that affects the substance of the transaction.¹⁷

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Footnotes

1 Vytar Associates v. Mayor and Aldermen of City of Annapolis, 301 Md. 558, 483 A.2d 1263 (1984); Hertz Corp. v. Shelby County, 667 S.W.2d 66 (Tenn. 1984).

2 City of Rochester v. Chiarella, 58 N.Y.2d 316, 461 N.Y.S.2d 244, 448 N.E.2d 98 (1983).

3 Buck v. Leggett, 813 S.W.2d 872 (Mo. 1991); Hertz Corp. v. Shelby County, 667 S.W.2d 66 (Tenn. 1984).
4 Sun Oil Co. v. Oklahoma Tax Commission, 1980 OK 150, 620 P.2d 896 (Okla. 1980).
5 Adams v. Friganza, 344 S.W.3d 240 (Mo. Ct. App. E.D. 2011), reh'g and/or transfer denied, (July 12, 2011)
and transfer denied, (Aug. 30, 2011).
6 Adams v. Friganza, 344 S.W.3d 240 (Mo. Ct. App. E.D. 2011), reh'g and/or transfer denied, (July 12, 2011)
and transfer denied, (Aug. 30, 2011).
7 Budget Rent-A-Car of Tulsa v. State ex rel. Oklahoma Tax Com'n, 1989 OK 67, 773 P.2d 736 (Okla. 1989).
8 Buck v. Leggett, 813 S.W.2d 872 (Mo. 1991).
9 National Health Network, Inc. v. Fulton County, 270 Ga. 724, 514 S.E.2d 422 (1999); Buck v. Leggett, 813
S.W.2d 872 (Mo. 1991); Lingscheit v. Cascade County, 249 Mont. 526, 817 P.2d 682 (1991).
10 Saunders Properties v. Municipality of Anchorage, 846 P.2d 135 (Alaska 1993); Wirt v. Esrey, 233 Kan.
300, 662 P.2d 1238 (1983).
11 Budget Rent-A-Car of Tulsa v. State ex rel. Oklahoma Tax Com'n, 1989 OK 67, 773 P.2d 736 (Okla. 1989).
12 Crest Communications v. Kuehle, 754 S.W.2d 563 (Mo. 1988).
13 Coquina Oil Corp. v. Larimer County Bd. of Equalization, 770 P.2d 1196 (Colo. 1989).
14 Boulder County Bd. of Com'rs v. HealthSouth Corp., 246 P.3d 948 (Colo. 2011).
15 Ex parte HealthSouth Corp., 978 So. 2d 745 (Ala. 2007).
16 Dunn v. Sequa Corp., 74 So. 3d 459 (Ala. Civ. App. 2011).
17 Eltel Associates, L.L.C. v. City of Pontiac, 278 Mich. App. 588, 752 N.W.2d 492 (2008).

72 Am. Jur. 2d State and Local Taxation § 973

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Twelve. Remedies for Wrongful Governmental or Official Action

LXIV. Refunding or Recovery Back of Illegal Tax Paid

B. Action to Recover Back Taxes Paid

§ 973. Payment under threat or duress

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#) 2776, 2280

A.L.R. Library

[Recovery of tax paid on exempt property, 25 A.L.R.4th 186](#)

[Propriety of class action in state courts to recover taxes, 10 A.L.R.4th 655](#)

Taxes paid under duress or coercion are recoverable even in the absence of a statute permitting recovery.¹ Indeed under the common law, a person could sue for a refund of taxes if he or she was compelled under duress imposed by a public entity to pay a tax that is illegal, illegally imposed, or illegally collected.² Duress and compulsory payment, for purposes of the duress exception to the voluntary-payment doctrine which otherwise provides that a taxpayer cannot recover illegal taxes voluntarily paid, are generally questions of fact to be judged in light of all of the circumstances surrounding the transaction.³ To show duress in the payment of illegal taxes such that the voluntary-payment doctrine does not apply, the payor must show that the payment was not voluntary because there was some necessity amounting to compulsion and that the payment was made under the influence of that compulsion.⁴ To render a payment of illegal taxes compulsory such that the voluntary-payment doctrine does not apply, there must be some actual or threatened power wielded over the payor from which the payor has no immediate relief and from which no adequate opportunity is afforded the payor to effectively resist the demand for payment.⁵

Generally, when a fee or tax has been paid with knowledge of its illegality, the payment is deemed to be voluntary and prevents a recovery of the money paid even if the payment was made under protest.⁶ However, if the payment was made under duress, it is deemed not voluntary, and thus, recovery may be had.⁷ Where one party makes a tax payment for another party under duress, a valid claim for repayment exists.⁸

In the context of taxation, duress means more than a business or economic inconvenience.⁹ Duress arises only when payment is necessary to avoid a threatened interference with the present liberty of a person or immediate possession of property.¹⁰ A payment is considered to be under duress or compulsion when it is made to an officer who has present authority to arrest the taxpayer or to levy on the property and who has demanded payment and is about to proceed to enforce payment.¹¹ A taxpayer claiming payment under duress need not show that he or she was actually threatened by anyone; implied duress will suffice, and such duress exists where the taxpayer's refusal to pay the tax would result in a loss of reasonable access to a good or service considered essential.¹²

Statutory penalties and accrued interest for the late payment of taxes can constitute implied duress.¹³ However, there can be no claim of implied duress if a person has a procedure by which he or she can pay the disputed amount of taxes, avoid the statutory penalties and interest, and assert a claim for repayment.¹⁴

A payment of taxes is not rendered involuntary by the mere fact that it was made to facilitate a sale of the payor's land to a third party.¹⁵ Mere threats of judicial proceedings do not, as a general rule, amount to duress or coercion in this context.¹⁶

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Footnotes

- 1 U.S. on Behalf of Cheyenne River Sioux Tribe v. State of S.D., 105 F.3d 1552 (8th Cir. 1997); Budget Rent-A-Car of Tulsa v. State ex rel. Oklahoma Tax Com'n, 1989 OK 67, 773 P.2d 736 (Okla. 1989).
- 2 Houston Independent School Dist. v. Morris, 355 S.W.3d 668 (Tex. App. Houston 1st Dist. 2011), reh'g overruled, (July 13, 2011) and petition for review filed, (Aug. 22, 2011).
- 3 Raintree Homes, Inc. v. Village of Long Grove, 389 Ill. App. 3d 836, 329 Ill. Dec. 553, 906 N.E.2d 751 (2d Dist. 2009).
- 4 Raintree Homes, Inc. v. Village of Long Grove, 389 Ill. App. 3d 836, 329 Ill. Dec. 553, 906 N.E.2d 751 (2d Dist. 2009).
- 5 Raintree Homes, Inc. v. Village of Long Grove, 389 Ill. App. 3d 836, 329 Ill. Dec. 553, 906 N.E.2d 751 (2d Dist. 2009).
- 6 § 969.
- 7 Comcast of Oregon II, Inc. v. City of Eugene, 211 Or. App. 573, 155 P.3d 99 (2007), aff'd on other grounds, 346 Or. 238, 209 P.3d 800 (2009); Lowenberg, v. City of Dallas, 261 S.W.3d 54 (Tex. 2008).
- 8 Ekan Properties v. Wilhm, 262 Kan. 495, 939 P.2d 918 (1997).
- 9 Video Aid Corp. v. Town of Wallkill, 85 N.Y.2d 663, 628 N.Y.S.2d 18, 651 N.E.2d 886 (1995).
- 10 As to payment of a tax to prevent the interference with a business as constituting an involuntary payment, see § 970.
- 11 City of Rochester v. Chiarella, 58 N.Y.2d 316, 461 N.Y.S.2d 244, 448 N.E.2d 98 (1983); Highland Church of Christ v. Powell, 640 S.W.2d 235 (Tex. 1982).
- 12 Atchison, T. & S.F. Ry. Co. v. O'Connor, 223 U.S. 280, 32 S. Ct. 216, 56 L. Ed. 436 (1912).
- 13 Wexler v. Wirtz Corp., 211 Ill. 2d 18, 284 Ill. Dec. 294, 809 N.E.2d 1240 (2004).
- 14 Houston Independent School Dist. v. Morris, 355 S.W.3d 668 (Tex. App. Houston 1st Dist. 2011), reh'g overruled, (July 13, 2011) and petition for review filed, (Aug. 22, 2011).
- 15 Houston Independent School Dist. v. Morris, 355 S.W.3d 668 (Tex. App. Houston 1st Dist. 2011), reh'g overruled, (July 13, 2011) and petition for review filed, (Aug. 22, 2011).

15 [Cameron County Water Imp. Dist. No. 1 v. Handley](#), 275 S.W. 298 (Tex. Civ. App. San Antonio 1925), writ dismissed w.o.j., (Nov. 11, 1925).

16 [Coca-Cola Co. v. Coble](#), 293 N.C. 565, 238 S.E.2d 780 (1977) (disapproved of on other grounds by, [Bailey v. State](#), 348 N.C. 130, 500 S.E.2d 54 (1998)).

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72 Am. Jur. 2d State and Local Taxation Twelve LXV A Refs.

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State and Local Taxation

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Part Twelve. Remedies for Wrongful Governmental or Official Action

LXV. Injunctive Relief

A. In General

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Federal Courts](#)  27

West's Key Number Digest, [Taxation](#)  2113, 2875

A.L.R. Library

A.L.R. Index, Injunctions

A.L.R. Index, Personal Property Tax

A.L.R. Index, Tax Assessors and Collectors

A.L.R. Index, Taxes

A.L.R. Index, Taxpayers

West's A.L.R. Digest, [Federal Courts](#)  27

West's A.L.R. Digest, [Taxation](#)  2113, 2875

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 30 to 51](#)

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72 Am. Jur. 2d State and Local Taxation § 974

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State and Local Taxation

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Part Twelve. Remedies for Wrongful Governmental or Official Action

LXV. Injunctive Relief

A. In General

§ 974. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#) 2113, 2875

A.L.R. Library

[Financial hardship or inability to pay taxes as rendering inapplicable statutes denying remedy by injunction against assessment or collection of tax, 65 A.L.R.2d 550](#)

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 30 to 51](#) (Injunctive relief against enforcement or collection)

Generally, the courts lack the equitable power to restrain the collection of taxes, and a taxpayer who disputes a tax may not seek an injunction restraining the collection of the tax pending the resolution of the dispute.¹

Some statutes, including state constitutions,² preclude an action for an injunction if there is an adequate remedy at law;³ others allow injunctive relief if the law under which the tax is imposed is void or if the property upon which the tax is imposed is tax-exempt;⁴ and still, others provide for injunctive relief only when specially authorized by statute⁵ or in exceptional cases.⁶ One jurisdiction limits exceptional cases to those situations in which, under the most liberal view of the law and the facts, the government cannot establish its claim.⁷ One challenging a tax assessment must continue to pay its taxes, and the commencement of an assessment review proceeding does not stay the collection of taxes or enforcement procedures instituted by the taxing authority.⁸

Where the challenge to the statutory remedy is that it fails to meet due process mandates, the claim actually asserts the inadequacy of the statutorily prescribed remedy, and equitable intervention for consideration of such a complaint may be appropriate.⁹

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Footnotes

1 International Lotto Fund v. Virginia State Lottery Dept., 20 F.3d 589 (4th Cir. 1994); MHC, Inc. v. Oregon Dept. of Revenue, 66 F.3d 1082 (9th Cir. 1995); Connolly v. County of Orange, 1 Cal. 4th 1105, 4 Cal. Rptr. 2d 857, 824 P.2d 663, 72 Ed. Law Rep. 1089 (1992), as modified, (Mar. 26, 1992); Rawson v. Harlan County, 247 Neb. 944, 530 N.W.2d 923 (1995); Forest Hills Local School Dist. Bd. of Edn. v. Noe, 144 Ohio Misc. 2d 1, 2007-Ohio-6082, 877 N.E.2d 756, 227 Ed. Law Rep. 928 (C.P. 2007).

2 Western Oil & Gas Assn. v. State Bd. of Equalization, 44 Cal. 3d 208, 242 Cal. Rptr. 334, 745 P.2d 1360 (1987), opinion modified on denial of reh'g, (Mar. 10, 1988).

3 Hutcherson v. Board of Sup'r's of Franklin County, Va., 742 F.2d 142 (4th Cir. 1984); Ganser v. Lancaster County, 215 Neb. 313, 338 N.W.2d 609 (1983).

4 As to the Federal Tax Injunction Act prohibiting United States district courts from interfering with the collection of any state tax where an efficient remedy is available in the courts of such state, see § 975.

5 First Nat. Bank and Trust Co. of Evanston v. Rosewell, 93 Ill. 2d 388, 67 Ill. Dec. 87, 444 N.E.2d 126 (1982); O'Brien v. Johnson, 32 Wash. 2d 404, 202 P.2d 248 (1949).

6 Baertsch v. Minnesota Dept. of Revenue, 518 N.W.2d 21 (Minn. 1994); Marx v. Truck Renting and Leasing Ass'n Inc., 520 So. 2d 1333 (Miss. 1987).

7 District of Columbia v. Keyes, 362 A.2d 729 (D.C. 1976).

8 Western Oil & Gas Assn. v. State Bd. of Equalization, 44 Cal. 3d 208, 242 Cal. Rptr. 334, 745 P.2d 1360 (1987), opinion modified on denial of reh'g, (Mar. 10, 1988).

9 W. T. Grant Co. v. Srogi, 52 N.Y.2d 496, 438 N.Y.S.2d 761, 420 N.E.2d 953 (1981); Brookmar Corp. v. Tax Com'r of City of New York, 13 Misc. 3d 772, 827 N.Y.S.2d 467 (Sup 2006).
Cedarbrook Realty, Inc. v. Nahill, 484 Pa. 441, 399 A.2d 374 (1979).

72 Am. Jur. 2d State and Local Taxation § 975

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

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Part Twelve. Remedies for Wrongful Governmental or Official Action

LXV. Injunctive Relief

A. In General

§ 975. Federal Tax Injunction Act

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Federal Courts](#) 27

A.L.R. Library

[Financial hardship or inability to pay taxes as rendering inapplicable statutes denying remedy by injunction against assessment or collection of tax, 65 A.L.R.2d 550](#)

The Federal Tax Injunction Act (TIA) prohibits federal courts from enjoining the collection of any state tax when a plain, speedy, and efficient remedy may be had in the courts of such state.¹ The TIA reflects a congressional purpose to confine federal court intervention in state government² and prevents federal litigation from interfering with substantial portions of a state's revenue or broad sections of a state's tax code.³ The TIA is construed as a broad jurisdictional barrier and has the primary purpose of dramatically limiting federal district court jurisdiction.⁴ Indeed, Congress passed the TIA to reverse the trend, in state tax cases, of federal courts becoming free and easy with injunctions.⁵ The TIA prohibits even declaratory relief when such relief would thwart state tax collection⁶ and also precludes civil rights suits for damages.⁷ However, the TIA does not prohibit interference with the operation of or compliance with state tax laws; rather, it proscribes interference only with those aspects of state tax regimes that are needed to produce revenue.⁸

The TIA applies to any state tax, including municipal and local taxes.⁹ It can generally be said that an assessment is a "tax" under the TIA when its purpose is to raise revenue while levies assessed for regulatory or punitive purposes, even though they may also raise revenues, are generally not "taxes" under the TIA.¹⁰ The view has also been expressed that in determining whether a charge is a "tax," for purposes of the TIA, the court should consider what entity is imposing the charge, what population is subject to the charge, and what purposes are served by the use of monies obtained by the charge.¹¹ When determining whether a particular charge is a "fee" or a "tax" for purposes of the TIA, the court should not focus on superficial nomenclature provided to the charge at issue but instead must examine explicit factual circumstances that transcend the literal meaning of the terminology and ask whether a charge is levied primarily for revenue raising purposes, making it a "tax," or whether it is assessed primarily for regulatory or punitive purposes, making it a "fee."¹² The courts focus on three primary factors in determining whether a certain charge is a "fee" or a "tax" under the Tax Injunction Act: (1) the entity imposing the charge; (2) the parties upon whom the charge is imposed; and (3) whether the charge is expended for general public purposes, or used for the regulation or benefit of the parties upon whom the assessment is imposed; when the first two factors are not dispositive, the courts emphasize the third.¹³

Certain actions that have been barred under the TIA include a suit brought by the parents of children attending a private school, alleging the unconstitutionality of school tax laws and seeking injunctive relief against the town assessor;¹⁴ a challenge to a "rent-subsidization program" which was actually a property tax scheme;¹⁵ a challenge to the constitutionality of a \$0.01 per gallon excise tax on the sale of leaded gasoline by distributors within city limits;¹⁶ a challenge to assessments imposed on riverboat gambling casino operators under a state statute where although the assessments on the casinos were not called taxes and they were placed in trust funds before they were distributed to racetrack operators, their aim was to raise revenue, not to cover costs;¹⁷ a challenge to a city's charging of interest on a Resolution Trust Corporation (RTC) assignee's unpaid property taxes where the assignee failed to show that the disputed charge was punitive and not compensatory;¹⁸ and a challenge to the validity of a state income tax which was shown to be a "tax" rather than an assessment for regulatory or punitive purposes.¹⁹

Practice Tip:

Because the Tax Injunction Act will not bar a suit for damages in civil rights actions, a plaintiff may seek damages for an alleged unconstitutional warrantless search and seizure by tax collection officials²⁰ or for actions seeking tax refunds for tax assessment discrimination.²¹

Observation:

The Tax Injunction Act is a jurisdictional bar that is not subject to waiver, and a federal court is duty-bound to investigate its application regardless of whether the parties raise it as an issue.²²

CUMULATIVE SUPPLEMENT

Cases:

Enforcement of Colorado statutory notice and reporting requirements for retailers that did not collect taxes on sales to Colorado purchasers was not "assessment" within scope of Tax Injunction Act (TIA), as would provide basis for divesting district court of jurisdiction over action by association of retailers that sought to enjoin enforcement of requirements; challenged notices of use-tax liability and reports to purchasers and state revenue department fell within information-gathering phase of tax administration process, which preceded assessment, or official recording of liability. [28 U.S.C.A. § 1341](#); [West's C.R.S.A. § 39-21-112\(3.5\)\(c, d\)](#); [1 Colo. Code Regs. § 201-1:39-21-112.3.5\(2\), \(3\)\(a, c, d\)](#). *Direct Marketing Ass'n v. Brohl*, 135 S. Ct. 1124 (2015).

Enforcement of Colorado statutory notice and reporting requirements for retailers that did not collect taxes on sales to Colorado purchasers was not "levy" within scope of Tax Injunction Act (TIA), as would provide basis for divesting district court of jurisdiction over action by association of retailers that sought to enjoin enforcement of requirements; challenged notices of use-tax liability and reports to purchasers and state revenue department fell within information-gathering phase of tax administration process, whereas levy was later official action imposing, determining amount of, or securing payment on tax. [26 U.S.C.A. § 6331](#); [28 U.S.C.A. § 1341](#); [West's C.R.S.A. § 39-21-112\(3.5\)\(c, d\)](#); [1 Colo. Code Regs. § 201-1:39-21-112.3.5\(2\), \(3\)\(a, c, d\)](#). *Direct Marketing Ass'n v. Brohl*, 135 S. Ct. 1124 (2015).

Enforcement of Colorado statutory notice and reporting requirements for retailers that did not collect taxes on sales to Colorado purchasers was not "collection" within scope of Tax Injunction Act (TIA), as would provide basis for divesting district court of jurisdiction over action by association of retailers that sought to enjoin enforcement of requirements; challenged notices of use-tax liability and reports to purchasers and state revenue department fell within information-gathering phase of tax administration process, whereas collection was subsequent act of obtaining or receiving payment of taxes due. [28 U.S.C.A. § 1341](#); [West's C.R.S.A. § 39-21-112\(3.5\)\(c, d\)](#); [1 Colo. Code Regs. § 201-1:39-21-112.3.5\(2\), \(3\)\(a, c, d\)](#). *Direct Marketing Ass'n v. Brohl*, 135 S. Ct. 1124 (2015).

Injunction against enforcement of Colorado statutory notice and reporting requirements for retailers that did not collect taxes on sales to Colorado purchasers would not "restrain" assessment, levy, or collection of tax under Tax Injunction Act (TIA), as would divest district court of jurisdiction over action by association of retailers that sought to enjoin enforcement of requirements to provide notices of use-tax liability and send reports to purchasers and state revenue department; prohibited restraints under TIA were orders that stopped, rather than merely inhibited, acts of assessment, levy, and collection. [28 U.S.C.A. § 1341](#); [West's C.R.S.A. § 39-21-112\(3.5\)\(c, d\)](#); [1 Colo. Code Regs. § 201-1:39-21-112.3.5\(2\), \(3\)\(a, c, d\)](#). *Direct Marketing Ass'n v. Brohl*, 135 S. Ct. 1124 (2015).

Suit in federal district court cannot be understood as prohibited under Tax Injunction Act (TIA) as one that "restrains" the assessment, levy, or collection of a state tax if it merely inhibits those activities. [28 U.S.C.A. § 1341](#). *Direct Marketing Ass'n v. Brohl*, 135 S. Ct. 1124 (2015).

Opioid stewardship payment imposed by New York legislature was a tax, within meaning of Tax Injunction Act (TIA), and thus district court lacked jurisdiction to declare it invalid or to enjoin its enforcement, despite contention that payment was regulatory fee or punitive fine; even if payment fell on narrow set of only 97 companies, and even though proceeds went into special revenue fund instead of general fund, primary purpose of payment was to raise revenue, not to punish or regulate opioid manufacturers and other licensees, and public health programs that stewardship payment funded related directly to general welfare of New York citizens. [28 U.S.C.A. § 1341](#); [N.Y. State Finance Law §§ 2, 97-aaaaa](#). *Association for Accessible Medicines v. James*, 974 F.3d 216 (2d Cir. 2020).

Applicability of Tax Injunction Act (TIA) did not have to be addressed in property owners' class-action lawsuit against county for placing disproportionate tax on commercial and industrial properties in township as opposed to similar types of properties

elsewhere in county, since dismissal was appropriate based on comity doctrine. [28 U.S.C.A. § 1341](#). *Perry v. Coles County, Illinois*, [906 F.3d 583](#) (7th Cir. 2018).

Tax Injunction Act (TIA) did not bar nightclub owner's action against District of Columbia, D.C. Office of Tax Revenue (OTR) agents, and District attorneys arising from OTR's issuance of tax summonses, alleging that summonses were part of a criminal investigation launched against him as retaliation for filing prior suit, where owner did not seek injunction against the assessment, levy, or collection of any tax, but instead sought injunction to stop alleged unconstitutional use of civil summonses in his criminal investigation, and District's statutory authority to issue tax summonses related not to post-assessment collections but, instead, was keyed to the information gathering phase of D.C.'s tax administration. [28 U.S.C.A. § 1341](#); [D.C. Code § 47-4310](#). *Thorp v. District of Columbia*, [317 F. Supp. 3d 74](#) (D.D.C. 2018).

Tax Injunction Act drastically limits the jurisdiction of district courts so as to not interfere with so important a local concern as the collection of taxes. [28 U.S.C.A. § 1341](#). *Drayton v. McIntosh County, Georgia*, [434 F. Supp. 3d 1374](#) (S.D. Ga. 2020).

Asserting a federal constitutional violation does not overcome the jurisdictional bar created by the Tax Injunction Act, so long as the state courts offer an adequate remedy. [28 U.S.C.A. §§ 1331, 1341](#). *Robert J. Caluda, APLC v. City of New Orleans*, [403 F. Supp. 3d 522](#) (E.D. La. 2019).

State fees, which federal district courts are not barred from enjoining under the Tax Injunction Act, can serve regulatory purposes as distinguished from general public purposes in two ways, either by discouraging particular conduct through the device of making it more costly, or by generating income earmarked to cover the cost of the regulation. [28 U.S.C.A. § 1341](#). *Doe v. Snyder*, [101 F. Supp. 3d 672](#) (E.D. Mich. 2015).

Although labeled a toll, amount charged to commercial trucking and freight companies under Rhode Island RhodeWorks Act, intended for use on bridge maintenance costs, was in reality a tax within meaning of Tax Injunction Act (TIA), and thus district court was without jurisdiction to enjoin its collection; although amount was set by agency, rather than the General Assembly, and although amount was imposed upon narrow class of large commercial truck payors, the express intention of establishing amount, which was expected to raise almost \$500 million over ten-year period, was to raise revenues to cover a longstanding infrastructure funding gap that would otherwise be collected through general revenue. [28 U.S.C.A. § 1341](#); [R.I. Gen. Laws Ann. § 42-13.1-1 et seq.](#) *American Trucking Associations, Inc. v. Alviti*, [377 F. Supp. 3d 125](#) (D.R.I. 2019).

[END OF SUPPLEMENT]

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Footnotes

- 1 [28 U.S.C.A. § 1341](#).
- 2 [Arkansas v. Farm Credit Services of Cent. Arkansas](#), [520 U.S. 821](#), [117 S. Ct. 1776](#), [138 L. Ed. 2d 34](#) (1997).
- 3 [A Bonding Co. v. Sunnuck](#), [629 F.2d 1127](#) (5th Cir. 1980).
- 4 [Hill v. Kemp](#), [478 F.3d 1236](#) (10th Cir. 2007).
- 5 The TIA is a broad jurisdictional impediment to federal court interference with the administration of state tax systems. [ANR Pipeline Co. v. Louisiana Tax Com'n](#), [646 F.3d 940](#) (5th Cir. 2011).
- 6 [Levin v. Commerce Energy, Inc.](#), [130 S. Ct. 2323](#), [176 L. Ed. 2d 1131](#) (2010).
- 7 [ANR Pipeline Co. v. Louisiana Tax Com'n](#), [646 F.3d 940](#) (5th Cir. 2011); [Scott Air Force Base Properties, LLC v. County of St. Clair, Ill.](#), [548 F.3d 516](#) (7th Cir. 2008).
- 8 [Lowe v. Washoe County](#), [627 F.3d 1151](#) (9th Cir. 2010).
- 9 [Hibbs v. Winn](#), [542 U.S. 88](#), [124 S. Ct. 2276](#), [159 L. Ed. 2d 172](#) (2004).
- 10 [Scott Air Force Base Properties, LLC v. County of St. Clair, Ill.](#), [548 F.3d 516](#) (7th Cir. 2008).
- 11 [Chamber of Commerce of U.S. v. Edmondson](#), [594 F.3d 742](#) (10th Cir. 2010).

11 GenOn Mid-Atlantic, LLC v. Montgomery County, Md., 650 F.3d 1021 (4th Cir. 2011).
12 GenOn Mid-Atlantic, LLC v. Montgomery County, Md., 650 F.3d 1021 (4th Cir. 2011).
13 Qwest Corp. v. City of Surprise, 434 F.3d 1176 (9th Cir. 2006).
14 Hickmann v. Wujick, 488 F.2d 875 (2d Cir. 1973).
15 Kraebel v. New York City Dept. of Housing Preservation and Development, 959 F.2d 395 (2d Cir. 1992).
16 57th St. Management Corp. v. City of New York, 456 F. Supp. 286 (S.D. N.Y. 1978).
17 Empress Casino Joliet Corp. v. Balmoral Racing Club, Inc., 651 F.3d 722 (7th Cir. 2011).
18 S/N1 Reo Ltd. Liability Co. v. City of New London ex rel. Ballestrini, 127 F. Supp. 2d 287 (D. Conn. 2000).
19 Maine v. DeVore, 324 F. Supp. 2d 103, 11 A.L.R. Fed. 2d 897 (D. Me. 2004).
20 Bormann v. Tomlin, 461 F. Supp. 193 (S.D. Ill. 1978), aff'd, 622 F.2d 592 (7th Cir. 1980).
21 North American Cold Storage Co. v. Cook County, 468 F. Supp. 424 (N.D. Ill. 1979).
22 Gray v. Owens, 413 F. Supp. 2d 573 (D. Md. 2006).

End of Document

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72 Am. Jur. 2d State and Local Taxation § 976

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

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Part Twelve. Remedies for Wrongful Governmental or Official Action

LXV. Injunctive Relief

A. In General

§ 976. Federal Tax Injunction Act—Exceptions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Federal Courts](#) 27

Under the "federal instrumentality" doctrine, the United States may sue on its own behalf or on behalf of its instrumentalities in federal court to avoid allegedly unconstitutional state taxation; consequently, the United States may resort to a federal court for relief where an application of a state tax threatens some attribute of national sovereignty.¹ Mineral lessees of the United States may not be deemed federal instrumentalities excepted from this jurisdictional bar unless federal legislation provides jurisdiction over their claim.²

The United States must join as a plaintiff as a prerequisite to a suit by a federal instrumentality to enjoin the collection of state taxes.³ A federal suit to enjoin state taxes can only be brought against state officers in their official capacity and not against a State in its own name.⁴ Thus, a district court may entertain a suit brought by the United States for a declaratory judgment that a local tax statute is unconstitutional as applied to the United States.⁵

Observation:

The Tax Injunction Act (TIA) does not deprive a district court of jurisdiction to grant declaratory or injunctive relief upon a claim by the United States against a State to enforce a federal statute prohibiting the State from levying state and local income taxes against members of Congress from other states who reside in such state in order to attend sessions of Congress.⁶

Notwithstanding the bar of the TIA, federal district courts have original jurisdiction of all civil actions brought by an Indian tribe wherein the matter in controversy arises under the Constitution, laws, or treaties of the United States.⁷ Thus, an Indian tribe can sue to restrain a State's taxing authority⁸ or to enjoin a State from applying its cigarette sales taxes and personal property taxes to tribe members residing on the tribe's reservation.⁹

The TIA is inapplicable in an original action before the United States Supreme Court because the Act by its terms only applies to injunctions issued by federal district courts.¹⁰ However, the Supreme Court cannot consider a taxpayer's constitutional claims on a direct appeal from a district court judgment in a suit challenging the constitutionality of a cooperative federal/state unemployment compensation scheme if the district court lacks jurisdiction because of the TIA.¹¹

The principles of comity that underlie the TIA do not apply in the narrow context of state taxation of railroad property.¹² The TIA is also inapplicable to an action by local government units and a local taxpayer group to compel the distribution of collected taxes.¹³

CUMULATIVE SUPPLEMENT

Cases:

Municipal charge imposed by city ordinance on select outdoor advertising displays was a "fee," not a "tax," for purposes of the Tax Injunction Act (TIA); though fact that charge was imposed by city council and collected by director of finance, who was city's general tax assessor, suggested that charge was a tax, fact that charge was imposed on a narrow class, that is, only the four entities that owned or operated outdoor advertising displays ten feet or larger in size within city, with one of those entities being overwhelmingly burdened by the charge, indicated that charge was a fee, as did regulatory purposes behind ordinance, namely, offsetting the economic burden caused by outdoor advertising displays, and reducing traffic and aesthetic harms. [28 U.S.C.A. § 1341](#). *Clear Channel Outdoor, Inc. v. Mayor and City Council of Baltimore*, 22 F. Supp. 3d 519 (D. Md. 2014).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Housing Authority of City of Seattle v. State of Wash., Dept. of Revenue](#), 629 F.2d 1307 (9th Cir. 1980).
- 2 [MRT Exploration Co. v. McNamara](#), 731 F.2d 260 (5th Cir. 1984).
- 3 [Housing Authority of City of Seattle v. State of Wash., Dept. of Revenue](#), 629 F.2d 1307 (9th Cir. 1980).
- 4 [Blatchford v. Native Village of Noatak and Circle Village](#), 501 U.S. 775, 111 S. Ct. 2578, 115 L. Ed. 2d 686 (1991).
- 5 [U.S. v. Montgomery County, Md.](#), 761 F.2d 998 (4th Cir. 1985).
- 6 [U.S. v. State of Md.](#), 636 F.2d 73 (4th Cir. 1980).
- 7 [28 U.S.C.A. § 1362](#).

8 Moe v. Confederated Salish and Kootenai Tribes of Flathead Reservation, 425 U.S. 463, 96 S. Ct. 1634, 48 L. Ed. 2d 96 (1976); People of State of Nev. v. King, 463 F. Supp. 749 (D. Nev. 1979).

9 Moe v. Confederated Salish and Kootenai Tribes of Flathead Reservation, 425 U.S. 463, 96 S. Ct. 1634, 48 L. Ed. 2d 96 (1976); Moses v. Kinnear, 490 F.2d 21 (9th Cir. 1973).

10 Maryland v. Louisiana, 451 U.S. 725, 101 S. Ct. 2114, 68 L. Ed. 2d 576 (1981).

11 California v. Grace Brethren Church, 457 U.S. 393, 102 S. Ct. 2498, 73 L. Ed. 2d 93 (1982).

12 Richmond, Fredericksburg & Potomac R. Co. v. Forst, 4 F.3d 244 (4th Cir. 1993).

13 Board of Educ. of Valley View Community Unit School Dist. No. 365U v. Bosworth, 713 F.2d 1316 (7th Cir. 1983).

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72 Am. Jur. 2d State and Local Taxation § 977

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State and Local Taxation

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Part Twelve. Remedies for Wrongful Governmental or Official Action

LXV. Injunctive Relief

A. In General

§ 977. Federal Tax Injunction Act—"Plain, speedy and efficient" remedies

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Federal Courts](#) 27

A.L.R. Library

[What Constitutes Plain, Speedy, and Efficient State Remedy Under Tax Injunction Act \(28 U.S.C.A. s1341\), Prohibiting Federal District Courts from Interfering with Assessment, Levy, or Collection of State Business Taxes, 31 A.L.R. Fed. 2d 237](#)
[Plain, Speedy, and Efficient Nature of State Remedy Under Tax Injunction Act \(28 U.S.C.A. s 1341\) Prohibiting Federal District Courts from Interfering with Assessment, Levy, or Collection of State Real Property Taxes, 19 A.L.R. Fed. 2d 383](#)

Under the Tax Injunction Act (TIA), federal district courts are prohibited from enjoining the assessment, levy, or collection of state taxes where a "plain, speedy, and efficient remedy" could be had in the state courts.¹ A refund relief alone may constitute such a remedy.²

A state remedy is plain, speedy, and efficient, within the meaning of the TIA, if it provides the aggrieved party with a full hearing and judicial determination at which a taxpayer may raise any and all constitutional objections to the tax, with ultimate review available in the United States Supreme Court.³ The "plain, speedy and efficient remedy" exception to the Act's prohibition only requires that the state remedy satisfy certain minimal procedural criteria: (1) the state court procedure must provide a taxpayer with a full hearing and judicial determination at which all constitutional objections to the tax, including those based on the State's failure to pay interest or to return all unconstitutionally collected taxes, may be raised; (2) no argument can be made that

the state procedure is uncertain or otherwise unclear and there is no question that the state court will hear and decide any federal claim; (3) the state remedy cannot impose any unusual hardship on the taxpayer requiring ineffectual activity or an unnecessary expenditure of time or energy; and (4) the remedy, when assessed against the usual time for similar litigation, must not fall outside the boundary of a "speedy" remedy.⁴ The state court remedy need not be the best remedy available or even equal to or better than the remedy which might be available in the federal courts.⁵

For state-court remedies to be "plain," within the meaning of the TIA, the procedures available in the state court must be certain;⁶ a state remedy is not plain within the meaning of the Act if there is uncertainty regarding its availability or effect.⁷ Whether a state-court remedy is "efficient," within the meaning of the TIA, generally turns on whether it imposes unusual hardship on the party challenging the state tax, requiring ineffectual activity or unnecessary expenditure of time or energy.⁸ A State's remedy does not become "inefficient" merely because a taxpayer must travel across a state line in order to resist or challenge the taxes sought to be imposed; if the taxing state provides an otherwise adequate remedy, the mere fact that an out-of-state corporation must go to the taxing state to invoke such remedy does not jeopardize the corporation's ability to assert its rights.⁹

Practice Tip:

The taxpayer has the burden of proving to the federal court that the TIA is not applicable by showing that the state court will not entertain a challenge to state taxation.¹⁰ More specifically, the taxpayer who seeks to surmount the jurisdictional bar of the TIA bears the burden of demonstrating the insufficiency of the remedy available in the state court system.¹¹ However, the likelihood of the taxpayer's success in the state court is not a factor to be considered when determining whether the jurisdictional prohibition of the TIA applies.¹²

The Tax Injunction Act (TIA) does not apply when the existence or adequacy of a state remedy is doubtful or uncertain.¹³ For purposes of the TIA, a remedy is adequate if a state forum is empowered to consider claims that the tax is unlawful and to issue relief; it does not require that such forum necessarily render a favorable decision or grant the particular relief sought.¹⁴ Moreover, a state remedy is adequate, so as to trigger the bar of the TIA on a federal district court action to enjoin, suspend, or restrain the assessment, levy, or collection of any state tax, if it provides taxpayers with complete judicial determination which is ultimately reviewable in the United States Supreme Court.¹⁵

CUMULATIVE SUPPLEMENT

Cases:

Tax Injunction Act applied to bar district court from having jurisdiction over property owners' claims that county conducted unequal property tax appraisals based on race in violation of the Fourteenth Amendment, § 1981, § 1982, and § 1983, since any relief would enjoin, suspend, or restrain county's tax assessment system, and owners had plain, speedy, and efficient remedy in state tax system. *U.S. Const. Amend. 14; 28 U.S.C.A. § 1341; 42 U.S.C.A. §§ 1981, 1982, 1983. Drayton v. McIntosh County, Georgia, 434 F. Supp. 3d 1374 (S.D. Ga. 2020).*

Principle of comity and the Tax Injunction Act, which prohibits district courts from enjoining, suspending, or restraining the assessment, levy, or collection of any tax under State law where a plain, speedy, and efficient remedy may be had in the courts of the state, barred religious non-profit entity's [§ 1983](#) claim alleging that entity's First Amendment rights were violated when city revoked operator's property tax exemption status in retaliation for entity's action alleging that city's designation of property on which entity sought to build religious center violated the Religious Land Use and Institutionalized Persons Act (RLUIPA). *U.S. Const. Amend. 1; 28 U.S.C.A. § 1341; Religious Land Use and Institutionalized Persons Act of 2000 § 2, 42 U.S.C.A. § 2000cc. Islamic Community Center for Mid Westchester v. City of Yonkers Landmark Preservation Board*, 258 F. Supp. 3d 405 (S.D. N.Y. 2017).

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Footnotes

- 1 28 U.S.C.A. § 1341.
- 2 *Barnes v. E-Systems, Inc.* Group Hosp. Medical & Surgical Ins. Plan, 501 U.S. 1301, 112 S. Ct. 1, 115 L. Ed. 2d 1087 (1991); *California v. Grace Brethren Church*, 457 U.S. 393, 102 S. Ct. 2498, 73 L. Ed. 2d 93 (1982).
- 3 *Colonial Pipeline Co. v. Morgan*, 474 F.3d 211 (6th Cir. 2007); *Scott Air Force Base Properties, LLC v. County of St. Clair, Ill.*, 548 F.3d 516 (7th Cir. 2008).
- 4 *Ashton v. Cory*, 780 F.2d 816 (9th Cir. 1986); *Hawaiian Telephone Co. v. State Dept. of Labor and Indus. Relations*, 691 F.2d 905 (9th Cir. 1982).
- 5 *Colonial Pipeline Co. v. Morgan*, 474 F.3d 211 (6th Cir. 2007); *Lowe v. Washoe County*, 627 F.3d 1151 (9th Cir. 2010).
- 6 *Lowe v. Washoe County*, 627 F.3d 1151 (9th Cir. 2010).
- 7 *Lowe v. Washoe County*, 627 F.3d 1151 (9th Cir. 2010).
- 8 *Lowe v. Washoe County*, 627 F.3d 1151 (9th Cir. 2010).
- 9 *Tully v. Griffin, Inc.*, 429 U.S. 68, 97 S. Ct. 219, 50 L. Ed. 2d 227 (1976).
- 10 *Fried v. Carey*, 620 F.2d 591 (7th Cir. 1978); *Sacks Bros. Loan Co., Inc. v. Cunningham*, 578 F.2d 172 (7th Cir. 1978).
- 11 *Scott Air Force Base Properties, LLC v. County of St. Clair, Ill.*, 548 F.3d 516 (7th Cir. 2008).
- 12 *Colonial Pipeline Co. v. Morgan*, 474 F.3d 211 (6th Cir. 2007); *May Trucking Co. v. Oregon Dept. of Transp.*, 388 F.3d 1261 (9th Cir. 2004).
- 13 *Czajkowski v. State of Ill.*, 460 F. Supp. 1265 (N.D. Ill. 1977), aff'd, 588 F.2d 839 (7th Cir. 1978).
- 14 *Dillon v. State of Mont.*, 634 F.2d 463 (9th Cir. 1980).
- 15 *ANR Pipeline Co. v. Louisiana Tax Com'n*, 646 F.3d 940 (5th Cir. 2011) (also stating that potential failure in the state court provides no basis for circumventing the jurisdictional bar imposed by the TIA).

72 Am. Jur. 2d State and Local Taxation Twelve LXV B Refs.

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

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Part Twelve. Remedies for Wrongful Governmental or Official Action

LXV. Injunctive Relief

B. Grounds and Conditions of Equitable Relief

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2874 to 2883

A.L.R. Library

A.L.R. Index, Injunctions
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A.L.R. Index, Taxes
A.L.R. Index, Taxpayers
West's A.L.R. Digest, [Taxation](#)  2874 to 2883

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 81 to 104](#)

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72 Am. Jur. 2d State and Local Taxation § 978

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Part Twelve. Remedies for Wrongful Governmental or Official Action

LXV. Injunctive Relief

B. Grounds and Conditions of Equitable Relief

1. In General

§ 978. Illegal taxes and invalid levies

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#) 2874 to 2877

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 81 to 91](#) (Exemptions from taxation; in general)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 92 to 104](#) (Exemptions from taxation; charitable, religious, educational, and other nonprofit institutions)

The state courts may grant equitable relief by way of an injunction against the collection of taxes only when the tax is unauthorized by law or is levied on exempt properties.¹ The two types of illegal-exaction cases that can arise under the constitutional provision giving citizens standing to bring such actions are "public-funds" cases where the plaintiff contends that public funds generated from tax dollars are being misapplied or illegally spent and "illegal-tax" cases where the plaintiff asserts that the tax itself is illegal or contrary to constitutional or statutory provisions.²

Under a statute providing for injunctive relief against illegal taxes, a district court has jurisdiction to enjoin the collection of a tax assessment if it is illegal.³ For a tax to be illegal so as to vest jurisdiction in the courts under statutes providing for injunctive

relief against the collection of illegal taxes, the action of the administrative officials must lack valid legislative authority, amount to fraud or corruption, or be so oppressive, arbitrary, or capricious as to amount to a fraud.⁴

A tax is unauthorized where the taxing body lacks jurisdiction or power to impose the tax⁵ or where the act imposing the tax is attacked as unconstitutional in its entirety.⁶ However, defects in a taxation scheme which are essentially procedural irregularities in the assessment process fail to establish a lack of authority of the assessor to act, and such taxes are not "unauthorized by law" for purposes of allowing taxpayers to seek equitable relief.⁷

For purposes of determining whether a tax is illegal, such that a court will have jurisdiction to issue an injunction against its collection, an administrative official's action is deemed "oppressive" if such action is harsh, rigorous, or severe; "capricious" if it is changing, apparently without regard to any laws; and "arbitrary" if it is without adequate determining principles, reason, or judgment.⁸ The erroneous interpretation of a statute by administrative taxing authorities does not, alone, render a tax arbitrary, capricious, and unreasonable so as to vest the court with jurisdiction to enjoin its collection.⁹ A challenge to the factual basis of a county's determination of when it discovers that personal property has escaped taxation, for purposes of the statute of limitation, does not implicate the legality of the tax as would confer jurisdiction on the district court to grant injunctive relief against collection of the tax.¹⁰

CUMULATIVE SUPPLEMENT

Cases:

Arkansas citizens have standing to pursue an illegal-exaction-of-tax claim. West's A.C.A. Const. Art. 16, § 13. [May v. Akers-Lang](#), 2012 Ark. 7, 386 S.W.3d 378 (2012).

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Footnotes

- 1 Boettcher v. Balka, 252 Neb. 547, 567 N.W.2d 95 (1997); State ex rel. Tracy v. Franklin Cty. Court of Common Pleas, 66 Ohio St. 3d 644, 614 N.E.2d 1047 (1993).
As to exemptions from taxation, generally, see §§ 207 to 221.
- 2 Ghegan & Ghegan, Inc. v. Weiss, 338 Ark. 9, 991 S.W.2d 536 (1999).
- 3 Barker v. Frank, 327 Ark. 589, 939 S.W.2d 837, 116 Ed. Law Rep. 1271 (1997); Boettcher v. Balka, 252 Neb. 547, 567 N.W.2d 95 (1997).
- 4 Dillon Stores v. Board of County Com'r's of Sedgwick County, 259 Kan. 295, 912 P.2d 170 (1996).
- 5 KT Winneburg, LLC v. Calhoun County Bd. of Review, 403 Ill. App. 3d 744, 344 Ill. Dec. 654, 937 N.E.2d 677 (4th Dist. 2010), appeal denied, 239 Ill. 2d 555, 348 Ill. Dec. 191, 943 N.E.2d 1101 (2011); Ganser v. Lancaster County, 215 Neb. 313, 338 N.W.2d 609 (1983).
- 6 Hoffmann v. Clark, 69 Ill. 2d 402, 14 Ill. Dec. 269, 372 N.E.2d 74, 98 A.L.R.3d 886 (1977).
- 7 Inolex Corp. v. Rosewell, 72 Ill. 2d 198, 20 Ill. Dec. 566, 380 N.E.2d 775 (1978).
- 8 Dillon Stores v. Board of County Com'r's of Sedgwick County, 259 Kan. 295, 912 P.2d 170 (1996).
- 9 Dillon Stores v. Board of County Com'r's of Sedgwick County, 259 Kan. 295, 912 P.2d 170 (1996).
- 10 Dillon Stores v. Board of County Com'r's of Sedgwick County, 259 Kan. 295, 912 P.2d 170 (1996).

72 Am. Jur. 2d State and Local Taxation § 979

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

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Part Twelve. Remedies for Wrongful Governmental or Official Action

LXV. Injunctive Relief

B. Grounds and Conditions of Equitable Relief

1. In General

§ 979. Excessive taxation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#) 2874, 2875, 2878

Generally, a taxpayer who disputes a state tax, even if the challenge rests on a federal right, may not seek an injunction restraining collection of the tax pending a resolution of the dispute.¹ Thus, errors or excess in valuation, or any grievance which can be remedied by a suit at law, either before or after the payment of taxes, will not justify an injunction to stay collection of a tax.² A mere overvaluation due to an error of judgment or mistake in calculation cannot, in the absence of fraud, be remedied in a proceeding to enjoin the collection of a tax.³ However, equity may grant relief if special grounds for equitable jurisdiction exist, such as a fraudulently excessive assessment where an adequate remedy at law is unavailable.⁴

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Footnotes

¹ [MHC, Inc. v. Oregon Dept. of Revenue](#), 66 F.3d 1082 (9th Cir. 1995).

² [Southern Ry. Co. v. Watts](#), 260 U.S. 519, 43 S. Ct. 192, 67 L. Ed. 375 (1923).

³ [Ganser v. Lancaster County](#), 215 Neb. 313, 338 N.W.2d 609 (1983).

⁴ [Hoyme Sav. and Loan Ass'n v. Hare](#), 60 Ill. 2d 84, 322 N.E.2d 833 (1974).

72 Am. Jur. 2d State and Local Taxation § 980

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

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Part Twelve. Remedies for Wrongful Governmental or Official Action

LXV. Injunctive Relief

B. Grounds and Conditions of Equitable Relief

1. In General

§ 980. Tender of tax due

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#) 2874, 2875, 2880, 2881

The party challenging a tax assessment must continue to pay taxes because commencing an assessment proceeding does not stay the collection of taxes or enforcement procedures validly instituted by the taxing authority on the grounds that a municipality ordinarily should not be denied or delayed in the enforcement of its right to collect the revenues upon which its very existence and general welfare depends.¹ The rule against challenging the collection of a tax—usually in the equitable forms of injunctive or declaratory relief—without first paying the tax is predicated on the existence of a procedure that provides the taxpayer with an adequate remedy at law to challenge the legality of a tax by seeking a refund of taxes already paid.² Although equity will not grant an injunction to restrain the collection, even of an illegal tax, without prior payment of the amount of the tax fairly and equitably due,³ a tender is not a prerequisite to injunctive relief against an assessment for taxation made upon unconstitutional principles and void in toto.⁴

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¹ [W. T. Grant Co. v. Srogi](#), 52 N.Y.2d 496, 438 N.Y.S.2d 761, 420 N.E.2d 953 (1981); [Chicago, M., St. Paul & P. R. Co. v. Board of Com'rs of Walworth County](#), 248 N.W.2d 386 (S.D. 1976).

² [City of Anaheim v. Superior Court](#), 179 Cal. App. 4th 825, 102 Cal. Rptr. 3d 171 (2d Dist. 2009), review denied, (Mar. 24, 2010).

3 City of Gadsden v. American Nat. Bank, 225 Ala. 490, 144 So. 93 (1932); Chadwick v. City of
Crawfordsville, 216 Ind. 399, 24 N.E.2d 937, 129 A.L.R. 469 (1940).
4 Meyer v. Wells Fargo & Co., 223 U.S. 298, 32 S. Ct. 218, 56 L. Ed. 445 (1912).

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Part Twelve. Remedies for Wrongful Governmental or Official Action

LXV. Injunctive Relief

B. Grounds and Conditions of Equitable Relief

2. Requisites of Equity Jurisdiction

§ 981. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#) 2879, 2880, 2882, 2883

A taxpayer seeking a preliminary injunction restraining the enforcement of a tax must meet the requirements of temporary injunctive relief, and a court can require the taxpayer to post an undertaking in order to protect a municipality from loss should the assessment proceedings prove that a preliminary injunction has been granted improperly.¹ Thus, a taxpayer seeking a preliminary injunction in a constitutional challenge to a tax statute must demonstrate an immediate risk of irreparable injury² and the lack of an adequate remedy at law.³ An adequate remedy at law means a remedy which is plain and complete and is as practical and efficient as the equitable remedy.⁴ Adequate remedies at law that preclude equitable relief include a right to appeal,⁵ a right to pay taxes under protest and seek a refund,⁶ and the opportunity to have members of a tax board disqualified for cause.⁷

The "unauthorized by law doctrine" is one exception to the general common law rule that in the field of taxation and revenue cases, equity will not assume jurisdiction to grant relief where a complete and adequate remedy at law exists.⁸ A true unauthorized-by-law challenge, within the meaning of the exception to the general common law rule that, in the field of taxation, equity will not assume jurisdiction to grant relief where a complete and adequate remedy at law exists, arises where the taxing body has no statutory power to tax in a certain area or has been given no jurisdiction to tax a certain subject, as opposed to a complaint that merely alleges procedural errors or irregularities in the taxing process, in which case equity relief would not be available.⁹ The unauthorized-by-law doctrine allows a taxpayer to pursue a suit for declaratory and injunctive relief even where the statutory remedy at law would be complete and adequate.¹⁰

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Footnotes

1 *Fredericks v. Blake*, 382 So. 2d 368 (Fla. Dist. Ct. App. 3d Dist. 1980); *W. T. Grant Co. v. Srogi*, 52 N.Y.2d 496, 438 N.Y.S.2d 761, 420 N.E.2d 953 (1981).
As to the grounds of equitable jurisdiction, generally, see *Am. Jur. 2d, Equity §§ 4 to 36*.

2 *Ex parte Monroe*, 723 So. 2d 15 (Ala. 1998); *Idaho County Property Owners Ass'n, Inc. v. Syringa General Hosp. Dist.*, 119 Idaho 309, 805 P.2d 1233 (1991).
As to irreparable injury as a basis for injunctive relief, generally, see *Am. Jur. 2d, Injunctions §§ 35 to 37*.

3 *North Pier Terminal Co. v. Tully*, 62 Ill. 2d 540, 343 N.E.2d 507 (1976); *Marlow Timberland, LLC v. County of Lake*, 800 N.W.2d 637 (Minn. 2011); *State ex rel. Ryland v. Tracy*, 78 Ohio App. 3d 631, 605 N.E.2d 990 (10th Dist. Franklin County 1992).

4 *Newton v. City of Grundy Center*, 246 Iowa 916, 70 N.W.2d 162 (1955).

5 *Rodgers v. Easterling*, 270 Ark. 255, 603 S.W.2d 884 (1980).

6 *Inolex Corp. v. Rosewell*, 72 Ill. 2d 198, 20 Ill. Dec. 566, 380 N.E.2d 775 (1978).

7 *Acree v. Walls*, 240 Ga. 778, 243 S.E.2d 489 (1978).

8 *Millennium Park Joint Venture, LLC v. Houlihan*, 241 Ill. 2d 281, 349 Ill. Dec. 898, 948 N.E.2d 1 (2010).

9 *Millennium Park Joint Venture, LLC v. Houlihan*, 241 Ill. 2d 281, 349 Ill. Dec. 898, 948 N.E.2d 1 (2010).

10 *Millennium Park Joint Venture, LLC v. Houlihan*, 241 Ill. 2d 281, 349 Ill. Dec. 898, 948 N.E.2d 1 (2010).

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State and Local Taxation

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Part Twelve. Remedies for Wrongful Governmental or Official Action

LXV. Injunctive Relief

B. Grounds and Conditions of Equitable Relief

2. Requisites of Equity Jurisdiction

§ 982. Multiplicity of suits

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#) 2879

The collection of an illegal tax may be enjoined where, if the tax was paid, numerous actions would need to be brought by the complainant to obtain a refund.¹ Likewise, the collection of an unlawful tax may be enjoined where if an injunction is refused, then the complainant will be subjected to numerous vexatious suits.² Although a plaintiff, who will not be subjected to numerous suits, cannot state a cause of action in equity based upon the ground that the defendant will be saved a multiplicity of suits,³ if the relief sought will prevent multiple suits, equity may impose an injunction to restrain the collection of an illegal tax.⁴ Also, the necessity of resorting to a multiplicity of actions for redress against an unlawful tax negates the existence of an adequate remedy at law and sustains the remedy by injunction.⁵

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Footnotes

- ¹ [Matthews v. Rodgers](#), 284 U.S. 521, 52 S. Ct. 217, 76 L. Ed. 447 (1932). As to multiplicity of suits as a guiding principle for granting or denying injunctive relief, see [Am. Jur. 2d, Injunctions](#) §§ 41 to 43.
- ² [Greene v. Louisville & I.R. Co.](#), 244 U.S. 499, 37 S. Ct. 673, 61 L. Ed. 1280 (1917); [Stanton v. Baltic Mining Co.](#), 240 U.S. 103, 36 S. Ct. 278, 60 L. Ed. 546 (1916).
- ³ [Dodge v. Osborn](#), 240 U.S. 118, 36 S. Ct. 275, 60 L. Ed. 557 (1916); [Fairley v. City of Duluth](#), 150 Minn. 374, 185 N.W. 390, 32 A.L.R. 1258 (1921).

4 *Matthews v. Rodgers*, 284 U.S. 521, 52 S. Ct. 217, 76 L. Ed. 447 (1932); *U.S. v. Board of Com'rs of Osage County, Okl.*, 251 U.S. 128, 40 S. Ct. 100, 64 L. Ed. 184 (1919).

5 *Lee v. Bickell*, 292 U.S. 415, 54 S. Ct. 727, 78 L. Ed. 1337 (1934); *Poulin v. Town of Danville*, 128 Vt. 161, 260 A.2d 208 (1969).

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72 Am. Jur. 2d State and Local Taxation § 983

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State and Local Taxation

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Part Twelve. Remedies for Wrongful Governmental or Official Action

LXV. Injunctive Relief

B. Grounds and Conditions of Equitable Relief

2. Requisites of Equity Jurisdiction

§ 983. Cloud on title

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#) 2879

Equity may restrain the collection of an illegal tax where it is shown that the refusal to grant relief would cast a cloud upon the title to real estate.¹

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Footnotes

¹ [Wallace v. Hines](#), 253 U.S. 66, 40 S. Ct. 435, 64 L. Ed. 782 (1920); [Scottish American Mortg. Co. v. Minidoka County](#), 47 Idaho 33, 272 P. 498, 65 A.L.R. 663 (1928).

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72 Am. Jur. 2d State and Local Taxation Twelve LXVI Refs.

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State and Local Taxation

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Part Twelve. Remedies for Wrongful Governmental or Official Action

LXVI. Practice

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2773, 2785 to 2792, 2885

A.L.R. Library

A.L.R. Index, Personal Property Tax
A.L.R. Index, Tax Assessors and Collectors
A.L.R. Index, Taxes
A.L.R. Index, Taxpayers
West's A.L.R. Digest, [Taxation](#)  2773, 2785 to 2792, 2885

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 25, 86](#)

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72 Am. Jur. 2d State and Local Taxation § 984

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Part Twelve. Remedies for Wrongful Governmental or Official Action

LXVI. Practice

§ 984. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#) 2773, 2789, 2885

The Due Process Clause of the 14th Amendment to the Federal Constitution requires that a State provide either predeprivation relief or postdeprivation relief for the recovery of taxes.¹ The purpose of statutes governing the procedure for recovery of an improperly collected tax is to prevent the crippling of taxing districts by allowing them to receive their needed revenue while disputes are pending and providing an opportunity to make adequate refunds if necessary.²

An action for money had and received is the appropriate remedy to recover money collected under an illegal tax assessment.³ A claim for a refund is one for money had and received, and the taxpayer must establish that the tax has been overpaid in order to recover a refund.⁴ Because the taxpayer must prove the illegal, erroneous, or excessive character of a tax payment in order to qualify for a refund, a refund claim does not accrue until all circumstances are present that cause the payment to be illegal, erroneous, or excessive.⁵

Statutes governing payment of taxes under protest and recovery generally provide the exclusive remedy for the recovery of contested taxes.⁶ In some jurisdictions, taxes that are allegedly "unconstitutional" are treated separately from those alleged to be "illegal" due to the unauthorized purpose or fraudulent conduct on the part of taxing officials, each remedy being exclusive to its category.⁷ Other jurisdictions employ a concurrent remedies statute, permitting a taxpayer to choose among statutory remedies, although such a statute does not allow taxpayers consecutively to try different methods of relief.⁸ Similarly, some taxpayers are afforded two remedies for recovery of taxes: an administrative procedure authorizing a court clerk to settle and adjust with taxpayers all errors and double assessments of taxes erroneously or illegally collected by them and to direct refunding of the same and payment under protest and common-law suit for recovery.⁹

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Footnotes

- 1 Church Point Wholesale Beverage Co., Inc. v. Tarver, 614 So. 2d 697 (La. 1993).
- 2 Burlington Northern R. Co. v. Green, 2001 SD 48, 624 N.W.2d 826 (S.D. 2001).
- 3 City of Norwich, Dept. of Public Utilities v. Town of Lebanon, 200 Conn. 697, 513 A.2d 77 (1986); Wats Marketing of America, Inc. v. Boehm, 242 Neb. 252, 494 N.W.2d 527 (1993).
- 4 Department of Property Valuation v. Salt River Project Agr. Imp. and Power Dist., 113 Ariz. 472, 556 P.2d 1134 (1976); Kasishke's Estate v. Oklahoma Tax Commission, 1975 OK 133, 541 P.2d 848 (Okla. 1975).
- 5 Nestle R&D Ctr., Inc. v. Levin, 122 Ohio St. 3d 22, 2009-Ohio-1929, 907 N.E.2d 714 (2009).
- 6 Bowman v. Goad, 348 Md. 199, 703 A.2d 144 (1997); Smith v. Multnomah County Bd. of Com'rs, 318 Or. 302, 865 P.2d 356 (1994).
- 7 Department of Revenue v. Nemeth, 733 So. 2d 970 (Fla. 1999); Burlington Northern R. Co. v. Green, 2001 SD 48, 624 N.W.2d 826 (S.D. 2001).
- 8 Church Point Wholesale Beverage Co., Inc. v. Tarver, 614 So. 2d 697 (La. 1993); Montana Bank of Roundup, N.A. v. Musselshell County Bd. of Com'rs, 248 Mont. 199, 810 P.2d 1192 (1991).
- 9 Holloway v. Putnam County, 534 S.W.2d 292 (Tenn. 1976).

End of Document

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72 Am. Jur. 2d State and Local Taxation § 985

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State and Local Taxation

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Part Twelve. Remedies for Wrongful Governmental or Official Action

LXVI. Practice

§ 985. Conditions precedent

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#) 2785

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 25](#) (Answer—Defense—Failure to exhaust administrative remedies)

Strict compliance with conditions precedent is required to invoke the statutory remedy for recovery of contested taxes.¹ Consistent with due process, a State may impose conditions precedent and require taxpayers to comply with statutorily prescribed protest procedures to receive a refund for the payment of taxes declared unconstitutional, including requiring payment of the disputed tax liability,² and the exhaustion of applicable administrative remedies.³ A taxpayer can seek judicial review of an assessment directly in the court by paying the taxes and then bringing a suit against the taxing unit for recovery of the taxes paid.⁴ In the property tax context, the application of the exhaustion principle means that a taxpayer ordinarily may not file or pursue a court action for a tax refund without first applying to the local board of equalization for assessment reduction and filing an administrative tax refund claim.⁵

In the jurisdictions that require the exhaustion of administrative remedies, the subject matter jurisdiction of the courts to grant refunds for taxes illegally or erroneously assessed and voluntarily paid does not attach unless the conditions precedent are fulfilled.⁶ Thus, a taxpayer's failure to appeal within a statutorily prescribed time from an alleged illegal action of a taxing body may preclude that taxpayer from maintaining an action seeking declaratory relief and a refund of taxes paid under protest.⁷

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Footnotes

- 1 First Data Resources, Inc. v. Howell, 242 Neb. 248, 494 N.W.2d 542 (1993); Wharf Resources (USA) Inc. v. Farrier, 1996 SD 110, 552 N.W.2d 610 (S.D. 1996).
- 2 Burlington Northern R. Co. v. Green, 2001 SD 48, 624 N.W.2d 826 (S.D. 2001); Lacey Nursing Center, Inc. v. Department of Revenue, 128 Wash. 2d 40, 905 P.2d 338 (1995).
- 3 Bartlett v. Ross, 891 S.W.2d 114, 97 Ed. Law Rep. 568 (Mo. 1995); Devoe v. Missoula County, 226 Mont. 372, 735 P.2d 1115 (1987).
- 4 The Villages at Red Bridge, LLC v. Weisner, 704 S.E.2d 925 (N.C. Ct. App. 2011), review denied, 365 N.C. 201, 710 S.E.2d 20 (2011).
- 5 Steinhart v. County of Los Angeles, 47 Cal. 4th 1298, 104 Cal. Rptr. 3d 195, 223 P.3d 57 (2010).
- 6 In re Custom Distribution Services Inc., 224 F.3d 235 (3d Cir. 2000); Castrigno v. McQuade, 141 Idaho 93, 106 P.3d 419 (2005); Marion County Auditor v. Revival Temple Apostolic Church, 898 N.E.2d 437 (Ind. Ct. App. 2008); New England Legal Foundation v. City of Boston, 423 Mass. 602, 670 N.E.2d 152 (1996).
- 7 In re Custom Distribution Services Inc., 224 F.3d 235 (3d Cir. 2000); Devoe v. Missoula County, 226 Mont. 372, 735 P.2d 1115 (1987).

End of Document

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72 Am. Jur. 2d State and Local Taxation § 986

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

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Part Twelve. Remedies for Wrongful Governmental or Official Action

LXVI. Practice

§ 986. Limitation of time

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#) 2786

A.L.R. Library

[Construction and Operation of Statutory Time Limit for Filing Claim for State Tax Refund, 14 A.L.R.6th 119](#)

The statutes of limitation are valid jurisdictional prerequisites which may be invoked to bar an otherwise meritorious claim for a tax refund.¹ Statutes requiring suits for the refund of unconstitutional taxes to be filed within a specific period provide adequate post-deprivation relief so as to comport with federal due process standards.² Some statutes require refund actions to be brought within a certain time period after paying the tax;³ others require a taxpayer to pay taxes under protest within a specific time period;⁴ and still, others provide that any action for recovery of taxes under a statute finally adjudged to be unconstitutional must be brought within a time certain after the final decision of the court declaring it to be unconstitutional.⁵

The statute of limitations on a claim against a county for a property tax refund has been held not equitably tolled while the property owner pursued a writ of mandate in good faith against the county assessment appeals board, where the mandate action was unreasonable, as a property tax refund action was the property owner's only legal remedy and it was well settled that mandamus was not available as a remedy, and neither the county nor the assessor could be blamed for any false representation or misleading silence.⁶

There is authority holding that an action by a restricted Indian to recover an illegal or unconstitutional levy of taxes would not be subject to a statute of limitations.⁷

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Footnotes

- 1 Sundance Homes, Inc. v. County of DuPage, 195 Ill. 2d 257, 253 Ill. Dec. 806, 746 N.E.2d 254 (2001).
- 2 Department of Revenue v. Nemeth, 733 So. 2d 970 (Fla. 1999).
- 3 Department of Revenue v. Nemeth, 733 So. 2d 970 (Fla. 1999); New England Legal Foundation v. City of Boston, 423 Mass. 602, 670 N.E.2d 152 (1996); Bala v. State, 2010 ND 164, 787 N.W.2d 761 (N.D. 2010).
- 4 Burlington Northern R. Co. v. Green, 2001 SD 48, 624 N.W.2d 826 (S.D. 2001); Angel v. Jackson, 724 S.W.2d 736 (Tenn. 1987).
- 5 Wats Marketing of America, Inc. v. Boehm, 242 Neb. 252, 494 N.W.2d 527 (1993).
- 6 Schoenberg v. County of Los Angeles Assessment Appeals Bd., 179 Cal. App. 4th 1347, 102 Cal. Rptr. 3d 86 (2d Dist. 2009), review denied, (Feb. 10, 2010).
- 7 In re Gross Production and Petroleum Excise Tax Protest of Bruner, 2006 OK CIV APP 21, 130 P.3d 767 (Div. 2 2005).

End of Document

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72 Am. Jur. 2d State and Local Taxation § 987

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

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Part Twelve. Remedies for Wrongful Governmental or Official Action

LXVI. Practice

§ 987. Parties

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#) 2787, 2788

A.L.R. Library

[Propriety of class action in state courts to recover taxes](#), 10 A.L.R.4th 655

A person who has no financial interest in a tax allegedly collected erroneously has no legal standing to sue for its refund.¹ A nontaxpayer's interest in the subject matter is insufficient to allow the nontaxpayer to intervene in a suit brought by a taxpayer seeking a tax exemption or refund.² However, an entity has standing to challenge the constitutionality of a state tax to determine if it has had an adverse competitive impact on its business.³

Observation:

Standing acquired after the statute of limitations has run cannot be retroactively applied to cure the lack of standing that existed when the action was filed.⁴

Under a statute providing that only a person who has actually paid the tax may bring a refund action, as opposed to the person who pays the property taxes of an owner of property, failure to follow the correct procedural rules can result in the forfeiture of the power to enforce the constitutional right to a refund.⁵ One purpose of the statute authorizing a cause of action for a property tax refund prior to the payment becoming delinquent is to ensure that only taxpayers who are not delinquent in their tax payment may file a tax refund complaint.⁶

The proper party defendant for the recovery of an unlawful tax is either the tax collector or the municipality, whichever has possession of the funds when the suit is commenced.⁷

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Footnotes

- 1 [Multi-Cinema, Ltd. v. South Carolina Tax Com'n, 292 S.C. 411, 357 S.E.2d 6 \(1987\).](#)
- 2 [Connolly v. County of Orange, 1 Cal. 4th 1105, 4 Cal. Rptr. 2d 857, 824 P.2d 663, 72 Ed. Law Rep. 1089 \(1992\), as modified, \(Mar. 26, 1992\).](#)
- 3 [Bacchus Imports, Ltd. v. Dias, 468 U.S. 263, 104 S. Ct. 3049, 82 L. Ed. 2d 200 \(1984\); Pass & Seymour, Inc. v. Town of Geddes, 126 Misc. 2d 805, 483 N.Y.S.2d 890 \(Sup 1984\).](#)
- 4 [Kocher v. Campbell, 282 Va. 113, 712 S.E.2d 477 \(2011\), cert. denied, 132 S. Ct. 847, 181 L. Ed. 2d 549 \(2011\).](#)
- 5 [IBM Personal Pension Plan v. City and County of San Francisco, 131 Cal. App. 4th 1291, 32 Cal. Rptr. 3d 656 \(1st Dist. 2005\).](#)
- 6 [Chan v. Montoya, 150 N.M. 44, 2011-NMCA-072, 256 P.3d 987 \(Ct. App. 2011\), cert. denied, 150 N.M. 667, 2011-NMCERT-005, 265 P.3d 718 \(2011\).](#)
- 7 [Berry v. Daigle, 322 A.2d 320 \(Me. 1974\).](#)

End of Document

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72 Am. Jur. 2d State and Local Taxation § 988

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State and Local Taxation

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Part Twelve. Remedies for Wrongful Governmental or Official Action

LXVI. Practice

§ 988. Estoppel and res judicata

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#) 2791

A.L.R. Library

[Estoppel of state or local government in tax matters, 21 A.L.R.4th 573](#)

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 86 \(Answer—Defense—Prior decree concerning property's tax-exempt status as res judicata\)](#)

The rule of res judicata, by which a judgment estops the parties, in future litigation between them, from questioning either a fact or a principle of law necessary to the first judgment and adjudicated therein, applies to cases of taxation,¹ as long as there exists the requisite elements, such as detrimental reliance² and mutuality of issues.³

Thus, a judgment involving a tax for one period, irrespective of what has been litigated and determined by the judgment, is not an absolute bar precluding the maintenance of a subsequent suit concerning a tax of the same kind for another period.⁴

However, the application of state-law res judicata principles violates the Federal Constitution, even if the invalidation of a tax would have disastrous consequences on the municipality, which has allegedly made substantial tax-revenue commitments based on the prior adjudication determining the tax's constitutionality, where the plaintiffs present a federal constitutional challenge to a public attempt to levy personal funds, and the application of the rule would deprive the plaintiffs of their "chuse in action," which is a protected property interest in its own right.⁵

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Footnotes

1 Sunshine Anthracite Coal Co. v. Adkins, 310 U.S. 381, 60 S. Ct. 907, 84 L. Ed. 1263 (1940); White v. Prince George's County, 282 Md. 641, 387 A.2d 260 (1978).
As to res judicata, generally, see [Am. Jur. 2d, Judgments §§ 463 to 472](#)
As to the elements, requisites, and grounds of estoppel, generally, see [Am. Jur. 2d, Estoppel and Waiver §§ 39 to 79](#).

2 Hunt Corp. v. Department of State Revenue, 709 N.E.2d 766 (Ind. Tax Ct. 1999).

3 Sharpton v. Turner, 964 F.2d 1284 (2d Cir. 1992); Greenhaw v. Board of County Com'rs of County of Johnson, 245 Kan. 67, 774 P.2d 956 (1989).

4 Maricopa County v. Southern Pac. Co., 61 Ariz. 269, 148 P.2d 824 (1944); State ex rel. Herbert v. Broth. of Railroad Trainmen Ins. Dept., 74 Ohio App. 263, 29 Ohio Op. 411, 41 Ohio L. Abs. 176, 54 N.E.2d 320 (2d Dist. Franklin County 1944).

5 Richards v. Jefferson County, Ala., 517 U.S. 793, 116 S. Ct. 1761, 135 L. Ed. 2d 76 (1996).

End of Document

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Part Twelve. Remedies for Wrongful Governmental or Official Action

LXVI. Practice

§ 989. Evidence; burden of proof

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2790

In a suit for refund of a tax, the burden of proof is on the taxpayer, and the taxpayer must not only prove that the tax assessment is incorrect but also must produce evidence to establish the proper amount of the tax.¹ Taxes are presumed to be just and legal, and the burden rests upon one assailing the tax to show its invalidity by substantial and credible evidence.² Taxpayers seeking a refund of personal property taxes must establish facts showing the amount of the refund to which they are entitled.³ The taxing authority has the burden to prove that a person sued for delinquent taxes on personal property owned such property when the tax was imposed.⁴ The burden rests on the objecting taxpayer to show statutory compliance necessary to defend against a particular tax levy or to recover from the tax protest funds.⁵

An assessor's valuation of land is *prima facie* valid, and in challenging an assessment, the taxpayer has the burden of proving that the assessment is excessive.⁶ The determination of whether a landowner has met the burden of proving that an assessment of the value of land for real estate taxes is excessive and the determination of the market value of the property if the assessment is excessive rest with the trial court's resolution of the evidence and of the weight and credibility of the testimony, including the opinions of expert witnesses.⁷

In a tax refund action alleging that the taxpayers were subject to a disproportionate valuation in violation of the state constitution's uniformity clause, the taxpayers would not have the burden of disproving all potential explanations for the disparity in valuation between the two groups of properties where the responsibility for doing so rested with the county.⁸

Once the pass-on defense is raised in an action to recover illegal taxes, it becomes the taxpayer's burden to show that it did not pass on the tax to another party.⁹

CUMULATIVE SUPPLEMENT

Cases:

Tax assessor's appraisals constituted admissions against interest that real property tax assessments for mobile home park were excessive to the extent that assessments exceeded those appraisals. [Thomas v. Davis, 96 A.D.3d 1412, 946 N.Y.S.2d 336 \(4th Dep't 2012\)](#), leave to appeal denied, [101 A.D.3d 1699, 957 N.Y.S.2d 261 \(4th Dep't 2012\)](#).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Apple, Inc. v. Franchise Tax Bd., 199 Cal. App. 4th 1, 132 Cal. Rptr. 3d 401 \(1st Dist. 2011\)](#), review denied, (Jan. 4, 2012).
- 2 [Matter of Collingwood Grain, Inc., 257 Kan. 237, 891 P.2d 422 \(1995\)](#); [Society Hill at Merrimack Condominium Ass'n v. Town of Merrimack, 139 N.H. 253, 651 A.2d 928 \(1994\)](#).
- 3 [Matter of Collingwood Grain, Inc., 257 Kan. 237, 891 P.2d 422 \(1995\)](#); [Trailblazer Pipeline Co. v. Balka, 246 Neb. 221, 518 N.W.2d 646 \(1994\)](#).
- 4 [Davis v. City of Austin, 632 S.W.2d 331 \(Tex. 1982\)](#).
- 5 [Wexler v. Wirtz Corp., 211 Ill. 2d 18, 284 Ill. Dec. 294, 809 N.E.2d 1240 \(2004\)](#).
- 6 [Society Hill at Merrimack Condominium Ass'n v. Town of Merrimack, 139 N.H. 253, 651 A.2d 928 \(1994\)](#); [Rio Algom Corp. v. San Juan County, 681 P.2d 184 \(Utah 1984\)](#).
- 7 [Society Hill at Merrimack Condominium Ass'n v. Town of Merrimack, 139 N.H. 253, 651 A.2d 928 \(1994\)](#); [Westhaven, Inc. v. Wood County Bd. of Revision, 81 Ohio St. 3d 67, 1998-Ohio-446, 689 N.E.2d 38 \(1998\)](#).
- 8 [Aileen H. Char Life Interest v. Maricopa County, 208 Ariz. 286, 93 P.3d 486 \(2004\)](#).
- 9 [Raintree Homes, Inc. v. Village of Long Grove, 389 Ill. App. 3d 836, 329 Ill. Dec. 553, 906 N.E.2d 751 \(2d Dist. 2009\)](#).

End of Document

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72 Am. Jur. 2d State and Local Taxation § 990

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

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Part Twelve. Remedies for Wrongful Governmental or Official Action

LXVI. Practice

§ 990. Right to interest

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#) 2791

A.L.R. Library

[Right to interest on tax refund or credit in absence of specific controlling statute, 88 A.L.R.2d 823](#)

The general rule is that unless authorized by statute, interest is not collectible on taxes due the State, county, or subdivision thereof nor on a refund thereof.¹ More specifically, a taxpayer generally is not entitled to interest on taxes illegally assessed or charged unless a specific statutory provision expressly authorizes such an award.² In determining whether a taxpayer is entitled to interest on a refund, the question is whether the legislature intended the refund to be accompanied by interest and that intention is primarily ascertained from the language of the statute.³ Where statutory provisions fail expressly to exempt the government with regard to interest, some states imply liability for the interest on a refund of overassessed taxes,⁴ particularly where the protested taxes are placed in interest-bearing accounts,⁵ and some states do not.⁶ Where municipal liability for interest is implied, some jurisdictions deny such interest, in whole or in part, in accordance with notions of fairness and justice, where the taxpayer is guilty of a long and inexcusable delay in demanding or suing for a refund.⁷

Practice Tip:

In some jurisdictions, although the State itself is not liable for interest in the absence of a statute imposing such a liability,⁸ a county or municipal corporation would be liable in similar circumstances.⁹

In the absence of specific statutory provisions entitling a taxpayer to interest on taxes illegally assessed or charged, some jurisdictions award such interest in a separate action brought after the refund has been made.¹⁰ In the interest of fairness and equity, a taxpayer may be entitled to recover interest on a refund of taxes illegally collected upon exempt property, particularly where the taxpayer is statutorily required to pay the disputed taxes in full as a condition precedent to contesting the legality of an assessment and where a judgment against such taxpayer may include a penalty or interest if the taxpayer has not paid the tax.¹¹

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Footnotes

- 1 City of Somerset v. Bell, 156 S.W.3d 321 (Ky. Ct. App. 2005).
- 2 Cabana v. Littler, 612 A.2d 678 (R.I. 1992); Board of Sup'rs of Fairfax County v. FCS Bldg. Ass'n, 254 Va. 464, 492 S.E.2d 634 (1997).
- 3 Shapiro v. Barrett, 68 Ill. App. 3d 656, 24 Ill. Dec. 872, 386 N.E.2d 76 (1st Dist. 1978); MPTH Associates v. Department of Finance, 308 Md. 674, 521 A.2d 757 (1987).
- 4 Ada County v. Red Steer Drive-Ins of Nevada, Inc., 101 Idaho 94, 609 P.2d 161 (1980); Miller v. Clark, 37 Ill. App. 3d 29, 344 N.E.2d 698 (2d Dist. 1976).
- 5 Southwestern Bell Tel. Co. v. Mitchell, 631 S.W.2d 31 (Mo. 1982); Ladish Malting Co. v. Stutsman County By and Through Stutsman County Bd. of Com'rs, 416 N.W.2d 31 (N.D. 1987).
- 6 State Tax Com'n, ex rel., Nevada Dept. of Taxation v. American Home Shield of Nevada, Inc., 254 P.3d 601, 127 Nev. Adv. Op. No. 31 (Nev. 2011); Board of County Com'rs of Johnson County v. Greenhaw, 241 Kan. 119, 734 P.2d 1125 (1987).
- 7 Ketchikan Spruce Mills v. Dewey, 17 Alaska 336, 1957 WL 3601 (Terr. Alaska 1957); Moto-Pep, Inc. v. McGoldrick, 202 Tenn. 119, 303 S.W.2d 326 (1957).
- 8 Com. ex rel. Alphin v. St. Matthews Gas & Elec. Shop, 286 S.W.2d 911 (Ky. 1956); State v. El Paso Natural Gas Co., 300 S.W.2d 170 (Tex. Civ. App. Austin 1957) (overruled on other grounds by, Texas Employment Com'n v. Ben Hogan Co., 854 S.W.2d 292 (Tex. App. Austin 1993)).
- 9 Com'rs of Sinking Fund of City of Louisville v. Ohio Val. Grocery Co., 240 S.W.2d 56 (Ky. 1951); Northwest Chemurgy Securities Co. v. Chelan County, 38 Wash. 2d 87, 228 P.2d 129 (1951).
- 10 Koolvent Aluminum Awning Co. of Pittsburgh v. City of Pittsburgh, 192 Pa. Super. 650, 162 A.2d 256 (1960).
- 11 Town of East Millinocket v. Town of Medway, 486 A.2d 739 (Me. 1985); In re Defenses and Objections to Personal Property Taxes for 1969 Assessment, 303 Minn. 66, 226 N.W.2d 296 (1975).

72 Am. Jur. 2d State and Local Taxation § 991

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Twelve. Remedies for Wrongful Governmental or Official Action

LXVI. Practice

§ 991. Accrual of refund period

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#) 2773

A.L.R. Library

[Retrospective application and effect of state statute or rule allowing interest or changing rate of interest on judgments or verdicts, 41 A.L.R.4th 694](#)

[Validity and construction of state statute or rule allowing or changing rate of prejudgment interest in tort actions, 40 A.L.R.4th 147](#)

The right of a taxpayer to interest on a tax paid under protest accrues either from the date of payment¹ or from the date that the petition for refund is filed, depending upon the wording of the enabling legislation.² A taxpayer challenging only the amount of an assessment and not its validity, and who successfully argues entitlement to a refund, is entitled to interest on such refund only from the date of the court-approved settlement, not from the date of payment.³

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Footnotes

¹ [Ada County v. Red Steer Drive-Ins of Nevada, Inc.](#), 101 Idaho 94, 609 P.2d 161 (1980); [Swartout v. City of Spokane](#), 21 Wash. App. 665, 586 P.2d 135 (Div. 3 1978).

2 In re Defenses and Objections to Personal Property Taxes for 1969 Assessment, 303 Minn. 66, 226 N.W.2d
296 (1975); Philadelphia & Reading Coal & Iron Co. v. School Dist. of Borough of Tamaqua, 304 Pa. 489,
156 A. 75, 76 A.L.R. 1007 (1931).

3 Welsh Grant Developers Co. v. Board of Revision of Taxes, 94 Pa. Commw. 159, 503 A.2d 98 (1986).

End of Document

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72 Am. Jur. 2d State and Local Taxation § 992

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

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Part Twelve. Remedies for Wrongful Governmental or Official Action

LXVI. Practice

§ 992. Attorney's fees

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#) 2791

Statutes permitting a taxpayer to recover costs incurred in a tax refund suit reflect a legislative policy that taxpayers who are entitled to tax refunds should be fully reimbursed for the reasonable expenses incurred to establish their right to a refund.¹ Under a statute providing that in tax refund suits a successful taxpayer is entitled to a refund with interest plus costs, the court may award actual attorney's fees.² Taxpayers are not entitled to attorney's fees and costs where their suit seeking a refund of property taxes is unsuccessful.³ Taxpayers have been held not entitled to attorney's fees after the county prevailed on its claim that the circuit court was not the proper forum for adjudicating the tax refund request where the taxpayers could not show action by the county without substantial justification.⁴

A statute governing refund of taxes paid under protest to a municipality only entitles a taxpayer to an award of those attorney's fees that it incurred with respect to its successful refund efforts.⁵

A taxpayer's refusal to agree to an extension of time for the county to respond to a summary judgment motion has been held not to warrant an award of attorney's fees under the statute governing sanctions for an unjustified action in the taxpayer's action seeking special action relief to compel the county to refund allegedly overpaid taxes.⁶

CUMULATIVE SUPPLEMENT

Cases:

Tax Court did not correctly exercise its discretion in awarding attorney fees to taxpayer in property tax appeal, where Tax Court erroneously determined that persistent over-valuation of the property made taxpayer's appeals to the Tax Court necessary, and such error was an integral part of court's decisionmaking in determining whether to award fees and the amount of such award. [Ellison v. Department of Revenue, 362 Or. 148, 404 P.3d 933 \(2017\)](#).

Taxpayer, a benevolent organization, that prevailed on its appeal of a property tax assessment, was required to comply with the rules of civil procedure governing judgments for costs and attorney fees; statute governing an award of costs by the circuit court against an unsuccessful appellant did not supplant other rules of civil procedure governing attorney fee awards. [S.D. Codified Laws §§ 10-11-45.1, 15-6-54\(d\). American Legion Home Association Post 22 v. Pennington County, 2018 SD 72, 919 N.W.2d 346 \(S.D. 2018\)](#).

Trial court, in calculating the statutory cap on jury-awarded attorney fees to taxpayers, who prevailed on their appeal of a determination of value of taxpayer's tracts of real property by appraisal review board, correctly treated each of taxpayers' three properties separately, rather than in the aggregate, when calculating the cap, which was 20 percent of the total amount by which taxpayers' tax liability was reduced as result of the appeal. [V.T.C.A., Tax Code § 42.29\(a\). Bexar County Appraisal Dist. v. Abdo, 399 S.W.3d 248 \(Tex. App. San Antonio 2012\)](#).

[END OF SUPPLEMENT]

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Footnotes

- 1 Kenai Peninsula Borough v. Port Graham Corp., 871 P.2d 1135 (Alaska 1994).
- 2 Kenai Peninsula Borough v. Port Graham Corp., 871 P.2d 1135 (Alaska 1994); Atascosa County Appraisal Dist. v. Tymrak, 858 S.W.2d 335 (Tex. 1993).
- 3 Kruse v. Cascade County, 244 Mont. 126, 796 P.2d 568 (1990).
- 4 Brackenbrook North Charleston, LP v. County of Charleston, 366 S.C. 503, 623 S.E.2d 91 (2005).
- 5 Fairbanks North Star Borough v. Dena Nena Henash, 88 P.3d 124 (Alaska 2004).
- 6 Hormel v. Maricopa County, 224 Ariz. 454, 232 P.3d 768 (Ct. App. Div. 1 2010), review denied, (Nov. 30, 2010).

End of Document

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72 Am. Jur. 2d State and Local Taxation § 993

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Twelve. Remedies for Wrongful Governmental or Official Action

LXVI. Practice

§ 993. Appeal

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2792

When a court of law acts in its appellate capacity with respect to the decision of an administrative board of tax review, the court reviews the board's decision for abuse of discretion, error of law, or findings unsupported by substantial evidence in the record.¹ On an appellate review of a trial court's valuation of property for taxation purposes, the trial court's determination must be affirmed unless it is clearly erroneous.² In an appeal in a special statutory proceeding for the purpose of ascertaining whether a taxpayer is entitled to a refund of a tax paid under protest, the trial court's judgment should be affirmed unless it is against the clear weight of the evidence or is contrary to law or to established principles of equity.³

There is authority holding that judicial review of a determination by an appellate tax board is limited to questions of law⁴ and that such board's statutory interpretation is reviewed *de novo*.⁵

An appellate court would review the actions of a county board of review in a tax appeal, even though the Property Tax Code article creating county boards of review had not expressly adopted the Administrative Review Law and no writ of certiorari had been filed, where the board's action effectively terminated proceedings before the administrative agency, and the differences which once existed between the statutory and common law methods of reviewing decisions of administrative agencies were all but lost.⁶

CUMULATIVE SUPPLEMENT

Cases:

As an administrative agency, the Tax Court's jurisdiction is governed by statute, and therefore, the doctrine of separation of powers dictates that the Supreme Court's jurisdiction to review decisions of the tax court by certiorari is also limited by statute. M.S.A. § 271.01. [Beuning Family LP v. County of Stearns](#), 817 N.W.2d 122 (Minn. 2012).

Department of Revenue was not required to refund or credit taxpayer the amount of any overpayment included in taxpayer's refund claim in order to allow chancery court to exercise jurisdiction over taxpayer's appeal of order of Board of Tax Appeals granting taxpayers only partial relief on refund denials and assessments, where Department contested taxpayer's payments in full. [Miss. Code Ann. § 27-77-7\(4\)](#) (former). [Mississippi Department of Revenue v. SBC Telecom, Inc.](#), 306 So. 3d 648 (Miss. 2020).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Town of Embden v. Madison Water Dist.](#), 1998 ME 154, 713 A.2d 328 (Me. 1998); [Frederick Farms, Inc. v. County of Olmsted](#), 801 N.W.2d 167 (Minn. 2011); [Community Bancshares, Inc. v. Secretary of State](#), 43 S.W.3d 821 (Mo. 2001).
- 2 [Gilmer County Bd. of Tax Assessors v. McHugh](#), 309 Ga. App. 145, 709 S.E.2d 311 (2011), cert. denied, (Sept. 12, 2011); [Comptroller of the Treasury v. Citicorp Intern. Communications, Inc.](#), 389 Md. 156, 884 A.2d 112 (2005).
- 3 [In re Assessment of Personal Property Taxes Against Missouri Gas Energy, Div. of Southern Union Co.](#), for Tax Years 1998, 1999, and 2000, 2008 OK 94, 234 P.3d 938 (Okla. 2008), cert. denied, 130 S. Ct. 1685, 176 L. Ed. 2d 179 (2010).
- 4 [NYNEX Corp. v. Commissioner Of Revenue](#), 61 Mass. App. Ct. 575, 812 N.E.2d 1230 (2004).
- 5 [In re Wilson](#), 161 N.H. 659, 20 A.3d 1006 (2011).
- 6 [Merisant Co. v. Kankakee County Bd. of Review](#), 352 Ill. App. 3d 622, 287 Ill. Dec. 376, 815 N.E.2d 1179 (3d Dist. 2004).

End of Document

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72 Am. Jur. 2d State and Local Taxation Correlation Table

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Topic Summary

Correlation Table

State and Local Taxation

This table shows where the subject matter in the various sections of the former edition of American Jurisprudence 2d is set forth in this revised volume. This table enables the user to translate references found in the prior edition and other legal publications into references to this edition.

Where the subject matter of a particular section of the prior edition of the article is now treated in another article, the title and section of that article is given. The reader should always consult the volume index for detailed information.

2001	2012
1	§1
2	§2
3	§3
4	DELETED
5	§4
6	§5
7	§6
8	§7
9	§8
10	§9
11	§10
12	§11
13	§12
14	§13
15	§14
16	§15
17	§16
18	§18
19	§17
20	§19
21	§20
22	§21
23	§22
24	§23
25	§24
26	§25
27	§26
28	§27
29	§28
30	§29
31	§30

32 §31
33 §32
34 §33
35 §34
36 §35
37 §36
38 §37
39 §38
40 §39
41 §40
42 §41
43 §42
44 §43
45 §44
46 §45
47 §46
48 §47
49 §48
50 §49
51 §50
52 §51
53 §52
54 §53
55 §54
56 §55
57 §56
58 §57
59 §58
60 §59
61 DELETED
62 §60
63 §83
64 §61
65 §62
66 §63
67 §95
67 §97
67 §98
67 §100
68 §64
69 DELETED
70 §65
71 §66
72 §67
73 §68
74 §69
75 §70
76 §71
77 §72
78 DELETED
79 DELETED
80 §73
81 §74
82 §75
83 §76
84 §77
85 §78
86 §79

87	§80
88	§81
89	DELETED
90	§82
91	§83
92	§84
93	§85
94	§86
95	§87
96	§88
97	§89
98	DELETED
99	DELETED
100	§90
101	DELETED
102	DELETED
103	§91
104	§92
105	§93
106	§94
107	§95
108	§96
109	§97
110	§98
111	§99
112	§100
113	§101
114	§102
115	§103
116	§104
117	§105
118	§106
119	§107
120	§108
121	§109
122	§110
123	§111
124	§112
125	§113
126	§114
127	§115
128	§116
129	§117
130	§118
131	§119
132	§120
133	§121
134	§122
135	§123
136	§124
137	§125
138	§126
139	§127
140	§128
141	§129
142	DELETED
143	§130
144	§131

145	§ 132
146	§ 133
147	DELETED
148	§ 134
149	§ 135
150	§ 136
151	DELETED
152	§ 137
153	§ 138
154	§ 139
155	§ 140
156	§ 141
157	§ 142
158	§ 143
159	§ 144
160	§ 145
161	§ 146
162	DELETED
163	§ 147
164	§ 148
165	DELETED
166	§ 149
167	§ 149
168	§ 150
169	§ 151
170	§ 152
171	§ 153
172	§ 154
173	§ 155
174	§ 156
175	§ 157
175	§ 158
176	§ 159
177	§ 160
178	§ 161
179	§ 162
180	§ 163
181	§ 164
182	§ 165
183	§ 166
184	§ 167
185	§ 168
185	§ 169
186	§ 170
187	§ 171
188	§ 172
189	DELETED
190	§ 173
191	DELETED
192	§ 174
193	DELETED
194	§ 175
195	§ 176
196	§ 177
197	§ 178
198	§ 179
199	§ 180
200	§ 181

201	DELETED
202	§182
203	§183
204	§184
205	§185
206	DELETED
207	§186
208	§187
209	§188
210	§189
211	DELETED
212	§190
213	DELETED
214	§191
215	§192
216	§193
217	§193
218	§194
219	§195
220	§196
221	§197
222	§198
223	§199
224	§200
225	DELETED
226	§201
227	§202
228	§203
229	§204
230	§205
231	§206
232	§207
233	§208
234	§209
235	§210
236	§211
237	§212
238	§213
239	§214
240	§215
241	§216
242	§217
243	§218
244	§219
245	§220
246	§221
247	§222
248	§223
249	§224
250	§225
251	§226
252	§227
253	§228
254	§229
255	§230
256	§231
257	§232
258	§233

259	§234
260	§235
261	§236
262	§237
263	§238
264	§239
265	§240
266	§241
267	§242
268	§243
269	§244
270	§245
271	§246
272	§247
273	§248
274	§249
275	§250
276	§251
277	§252
278	§253
279	§254
280	§255
281	§256
282	§257
283	§258
284	§259
285	§260
286	§261
287	§262
288	§263
289	§264
290	§265
291	§266
292	DELETED
293	DELETED
294	§267
295	§268
296	§269
297	§270
298	§271
299	§272
300	§273
301	§274
302	§275
303	§276
304	§277
305	§278
306	§279
307	§280
308	§281
309	§282
310	§283
311	§284
312	§285
313	§286
314	§287
315	§288
316	§289

317	§290
318	§291
319	§292
320	§293
321	§294
322	§295
323	§296
324	§297
325	§298
326	§299
327	§300
328	§301
329	§302
330	§303
331	§304
332	§305
333	§306
334	§307
335	§308
336	§309
337	§310
338	§311
339	§312
340	§313
341	§314
342	§315
343	§316
344	§317
345	§318
346	§326
346	§327
347	§319
347	§321
347	§322
348	§319
348	§321
349	§323
350	§324
351	§325
352	§326
353	§327
354	§328
355	§329
356	§330
356	§331
356	§335
357	§333
358	§336
359	DELETED
360	§334
361	§337
362	§338
362	§339
363	§340
363	§341
364	§342
365	DELETED
366	§343

367	DELETED
368	§344
369	§345
370	§346
371	§347
372	§348
373	§349
374	§350
375	§351
376	§352
377	§353
378	§354
379	§355
380	§356
381	§357
382	§358
383	§359
384	§360
385	§361
386	§361
387	§362
387	§363
388	§364
389	§365
390	§366
391	§367
392	§368
393	§369
394	§370
395	§371
396	§372
397	§373
398	§374
399	§375
400	§376
401	§388
402	§377
403	§378
404	§379
405	§380
406	§381
407	§381
408	§382
409	§383
410	§384
411	§384
412	§385
413	§386
414	§387
415	§388
416	§389
417	§389
418	§389
419	§390
420	§391
421	§392
422	§393
423	§394

424	§390
425	§390
426	§395
427	§396
428	§397
429	§398
430	§399
431	§400
432	§401
433	§402
434	§403
435	§404
436	DELETED
437	§405
438	§406
439	§409
440	§410
441	§411
442	§407
443	§408
444	§412
445	§413
446	§414
447	§415
448	§416
449	§417
450	§418
451	§419
452	§420
453	§421
454	§422
455	DELETED
456	§425
456	§428
457	§426
458	§427
459	§428
460	§429
461	§430
462	§431
463	§432
464	§433
465	§434
466	§435
467	§436
468	DELETED
469	§437
470	§438
471	§439
472	§440
473	§441
474	§442
475	DELETED
476	§443
477	§444
478	§445
479	§446
480	§447

481	§448
482	§449
483	§450
484	§451
484	§452
485	§453
485	§456
486	§454
486	§484
487	§455
488	§457
489	§458
490	§459
490	§460
491	§460
492	§461
493	§462
494	§463
495	§464
496	§465
497	§466
498	§467
499	§468
500	§469
501	DELETED
502	§470
502	§471
503	§472
504	§473
505	§474
506	§475
507	§476
508	§477
509	§478
509	§480
509	§481
510	§482
510	§483
511	§479
511	§481
512	§484
513	§485
514	§486
515	§488
516	§487
517	DELETED
518	§489
519	§441
519	§490
520	§491
521	§434
521	§439
521	§492
522	§493
523	§494
524	§495
525	§496
526	§497

527	§498
528	§499
529	§500
530	§501
531	§502
532	§503
533	§504
534	§505
535	§506
536	§507
537	§509
538	§510
539	§511
540	§512
540	§513
541	§514
542	§515
542	§517
543	§516
544	§517
545	§518
546	§519
547	§520
548	§521
549	§522
550	§524
551	§525
552	§526
553	§527
554	§528
555	§529
556	§530
557	§531
558	§532
559	§533
560	§534
561	§535
562	§536
563	§537
564	§538
565	§539
566	§540
567	§541
568	§542
569	§543
570	§544
571	§545
572	§546
573	§547
574	§548
575	§549
576	§550
577	§551
578	§552
579	§553
580	§554
581	§555
582	§556

583	§557
584	§558
585	§559
586	§560
587	§561
588	§562
589	§563
590	§560
590	§564
591	§565
592	§566
593	§567
594	§568
595	§569
596	§570
597	§571
598	§572
599	§573
600	§574
601	§575
602	§576
603	§577
604	§578
605	§579
606	§580
607	§581
608	§582
609	§583
610	§584
611	§585
612	§586
613	§569
613	§587
614	§588
615	§589
616	§590
617	§591
617	§592
618	§593
619	§592
619	§594
620	§595
621	§596
622	§597
623	§598
624	§599
625	§600
626	§601
627	§602
628	§603
629	§604
630	§605
631	§606
632	§607
633	§608
634	§609
635	§610
636	§611

637	§612
638	§613
639	§614
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1000	§989
1001	§990
1002	§991
1003	§992
1004	§993

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